

(23,143)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 602.

EMMA HARRIS, ALIAS EMMA R. SMITH, AND BESSIE
GREEN, PLAINTIFFS IN ERROR AND PETITIONERS,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO AND ON WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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a No. 2177.

United States Circuit Court of Appeals, Sixth Circuit.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN, Plaintiffs,
in Error,

vs.

UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Southern
District of Ohio.

Record.

Original Transcript Filed April 21, 1911.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, as:

In the District Court of the United States within and for the Dis-
trict and Division Aforesaid.

Present, the Honorable Howard C. Hollister, Judge.

Among the Proceedings had were the following, to-wit:

No. 798.

THE UNITED STATES OF AMERICA

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN.

Indictment.

Be it remembered that on the ninth day of February, in the year
of our Lord one thousand nine hundred and eleven, came the Grand
Jurors of the United States within and for the District and Division
aforesaid, and presented to the Court their certain Bill of Indict-
ment against the defendants herein, which said Bill of Indictment
is clothed in the words and figures following, to-wit:

Indictment.

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, ss:

In the District Court of the United States within and for the Western Division of the Southern District of Ohio, in the Sixth Judicial Circuit, of the Term of February, in the Year of Our Lord One Thousand Nine Hundred and Eleven.

1st Count. Sec. 2,—Act of June 25, 1910, 36 Stat., 825; "White Slave Traffic Act."

The Grand Jurors of the United States of America, duly empaneled, sworn and charged to inquire within and for the Western Division of said district, upon their oaths and affirmations, present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to-wit, the eighth day of September, in the year one thousand nine hundred and ten, in the County of Hamilton, in the State of Ohio, in the Circuit and Western Division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly cause to be transported, and did aid and assist in obtaining transportation for and in transporting in interstate commerce, to-wit, from the City of Charleston, in the State of West Virginia, to and into the City of Cincinnati, in the County of Hamilton and State of Ohio, and within the southern judicial district of said State of Ohio, and within the jurisdiction of this court,

2 two certain women, to-wit, Nellie Stover and Stella Larkins, for the purpose of prostitution, to-wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them, that each of said Nellie Stover and Stella Larkins, would and should in said City of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit, and indiscriminate sexual intercourse with men for hire and gain, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

2nd Count. Sec. 2,—Act of June 25, 1910, 36 Stat. 825; "White-Slave Traffic Act."

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to-wit, the eighth day of September, in the year one thousand nine hundred and ten, in the County of Hamilton, in the State of Ohio, in the Circuit and Western Division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly procure and obtain, and cause to be procured and obtained, at the City of Charleston, in the State of West Virginia, two certain railroad passenger tickets from the Chesapeake & Ohio Railway Company, then and there a common carrier of passengers, engaged in interstate commerce, each of which said tickets was good for transportation

for one person from said City of Charleston, West Virginia, to the City of Cincinnati, in the State of Ohio, upon and over the line and railroad route of the said Railway Company,—with the purpose and intention that said tickets should be used by two certain women, to-wit, Nellie Stover and Stella Larkins, in interstate commerce, to-wit, in going from said City of Charleston, in the State of West Virginia, to said City of Cincinnati, in said State of Ohio, for the purpose of prostitution, to-wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them, that each of said women, to-wit, Nellie Stover and Stella Larkins, would and should, in said City of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain,—whereby, and with the means and by the use of the said tickets, said Nellie Stover and Stella Larkins were then and there and thereupon carried and transported as passengers in interstate commerce,

3 over and upon the railway route and line of said railway company, to-wit, from said City of Charleston, in the State of West Virginia, to and into said City of Cincinnati, in the State of Ohio, and within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, for the purposes aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

3rd Count. Sec. 3,—Act of June 25, 1910, 36 Stat. 825; "White-slave Traffic Act."

And the Grand Jurors aforesaid, upon their oaths and Affirmations aforesaid, do further present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to-wit, the eighth day of September, in the year one thousand nine hundred and ten, in the County of Hamilton, in the State of Ohio, in the Circuit and Western Division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly persuade, induce, entice, and cause to be persuaded, in induced and enticed, two certain women, to-wit Nellie Stover and Stella Larkins, to go from one place, to-wit, the City of Charleston, in the State of West Virginia, to another place, to-wit, the City of Cincinnati, in the State of Ohio, within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, in interstate commerce, for the purpose of prostitution, to-wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them, that each of said women, to-wit Nellie Stover and Stella Larkins, would and should in the said City of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain, with the consent of the said Nellie Stover and Stella Larkins; and did then and there and thereby knowingly cause and aid and assist in causing said women, to-wit, Nellie Stover and Stella Larkins, to go and be carried and transported in interstate commerce, as passengers, upon

and over the railway route and line of the Chesapeake & Ohio Railway Company, a common carrier engaged in interstate commerce, to-wit, from the said City of Charleston, in the State of West Virginia, to and into the said City of Cincinnati, in the State of Ohio, for the purpose aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SHERMAN T. McPHERSON,
*United States Attorney in and for the
Southern District of Ohio.*

- 4 The following endorsment appears on the back of said Indictment:
A true bill. Wm. H. Davis, Foreman.

Entry, 10—312.

And afterwards, to-wit: on the 10th day of February, A. D. 1911, an Entry was made upon the Journal of said Court in said cause which said Entry is clothed in the words and figures following, to-wit:

No. 798.

THE UNITED STATES OF AMERICA

VS.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN, etc.

This day came the District Attorney on behalf of the United States and the said defendants, Emma Harris, alias, Emma R. Smith and Bessie Green, being present in Court pursuant to the tenor of their recognizance as given before the United States Commissioner for appearance on this date. And on motion of the United States Attorney it is ordered that the said defendants, Emma Harris, alias, Emma R. Smith and Bessie Green, enter into a recognizance before this Court in the sum of Three Thousand — (\$3,000.00) each, for their appearance before this Court on the 15th day of February and from day to day thereafter.

Recognizance.

And afterwards, to-wit: on the same day, the following Recognizance was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

Be it remembered, That on the 10th day of February, A. D. 1911, before me, B. E. Dilley, Clerk of the United States District Court, within and for the District aforesaid, duly appointed as such by the said Court personally came Bessie Green as principal and Charles

Albert and Clifford B. Reeves as sureties and jointly and severally acknowledged themselves to owe the United States of America in the sum of Three Thousand (\$3,000.00) Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to-wit:

The condition of this Recognizance is such, that if the said Bessie Green shall personally appear before the District Court of the United States, in and for the District aforesaid, at Cincinnati, Ohio, on February 15, 1911, and from day to day thereafter as may be required and then and there to answer unto an indictment pending therein for violation of Secs. 2-3 Act of June 25-1910 (36 Stat. 825) and then and there abide the further order of said Court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

BESSIE GREEN.	[SEAL.]
CHAS. ALBERT.	[SEAL.]
CLIFFORD B. REEVES.	[SEAL.]

Taken and acknowledged before me on the day and year first above written.

[SEAL.]

B. E. DILLEY,
Clerk U. S. District Court, Southern District of Ohio,
By HARRY F. RABE, Deputy.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Charles Albert one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Six Thousand (\$6000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

CHARLES ALBERT.

Sworn to before me the 10th day of February, 1911.

[SEAL.]

HARRY F. RABE,
Deputy Clerk, U. S. Circuit Court, S. D. O. .

SOUTHERN DISTRICT OF OHIO, ss:

I, Clifford B. Reeves, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Twenty-five thousand (\$25,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

CLIFFORD B. REEVES.

Sword to before me the 10th day of February, 1911.

[SEAL.]

HARRY F. RABE,
Deputy Clerk, U. S. Circuit Court, S. D. O.

Recognizance.

And afterwards, to-wit: on the same day, the following Recognizance was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

Be it remembered, That on this 10th day of February A. D. 1911, before me, B. E. Dilley, Clerk of the United States District Court, within and for the District aforesaid, duly appointed as such
6 by the said Court personally came Emma Harris, alias Emma R. Smith as principal and Charles Albert and Clifford B. Reeves as sureties, and jointly and severally acknowledged themselves to owe the United States of America in the sum of Three Thousand (\$3000.00) Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to-wit:

The condition of this recognizance is such that if the said Emma Harris, alias Emma R. Smith shall personally appear before the District Court of the United States, in and for the District aforesaid, at Cincinnati, Ohio, on February 15, 1911, and from day to day thereafter as may be required and then and there to answer unto an indictment pending therein for violation of Secs. 2-3 of Act of June 25, 1910, (36 Stat. 825) and then and there abide the further order of said Court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

EMMA SMITH.	[SEAL.]
CHAS. ALBERT.	[SEAL.]
CLIFFORD B. REEVES.	[SEAL.]

Taken and acknowledged before me on the day and year first above written.

[SEAL]

B. E. DILLEY,
Clerk U. S. District Court, Southern District of Ohio,
By HARRY F. RABE, *Deputy.*

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Charles Albert, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Six Thousand (\$6000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

CHAS. ALBERT.

Sworn to before me the 10th day of February, 1911.

[SEAL.]

HARRY F. RABE,
Deputy Clerk, U. S. District Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, ss:

I, Clifford B. Reeves, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Twenty-five Thousand (\$25,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

CLIFFORD B. REEVES.

Sworn to before me the 10 day of February, 1911.

[SEAL.]

HARRY F. RABE,
Deputy Clerk, U. S. District Court, S. D. O.

7 *Motion to Quash.*

And afterwards, to-wit: on the 17th day of February, A. D. 1911, the following Motion to Quash was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 798.

THE UNITED STATES OF AMERICA, Complainant,

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN, Defendants.

Motion to Quash.

Now comes the said Emma Harris, alias Emma R. Smith, and Bessie Green, and move the Court to quash the indictment herein, by reason of certain defects apparent upon the face of the record, in this, to wit:

First. Defects in the form of the Indictment.

Second. Defects in the manner in which the offenses are charged in the different counts of the indictment.

Third. Because the intent charged against the defendants in each of the counts of the Indictment is not a criminal intent.

WILLIAM LITTLEFORD,
Attorneys for Defendants.

Entry, 10—322.

And afterwards, to-wit: on the same day, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 798.

THE UNITED STATES OF AMERICA, Complainant,

VS.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN, Defendants.

Entry Overruling Motion to Quash.

And now this cause coming on for hearing on the motion of the defendants to quash the said indictment, the Court being fully advised in the premises, overrules the same.

To all of which the defendants herein except.

Demurrer.

And afterwards, to-wit: on the same day, came the defendants by their Attorney and filed in the Clerk's Office of said Court, a certain demurrer in this cause, which said Demurrer is clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 798.

THE UNITED STATES OF AMERICA, Complainant,

VS.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN, Defendants.

Demurrer.

The said defendants demur to the indictment herein and each of the counts thereof for the reason that the facts stated therein do not constitute any offense punishable by the laws of the United States.

WILLIAM LITTLEFORD,
Attorneys for Defendants.

Order, 10—322.

And afterwards, to-wit: on the same day an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

No. 798.

UNITED STATES OF AMERICA, Plaintiff,
 vs.
 EMMA HARRIS and BESSIE GREEN, Defendants.

Entry Overruling Demurrer.

This day this cause came on for hearing upon the demurrer of the defendants Emma Harris, alias Emma R. Smith, and Bessie Green, to the indictment heretofore found herein; and was argued by counsel and submitted to the Court, and upon consideration the Court finds that the demurrer is not well taken, and the Court does overrule the same, to which finding and overruling the said defendants at the time excepted.

Entry, 10—320.

And afterwards, to-wit: on the same day an Entry was made upon the Journal of said Court in said cause, which said Entry is clothed in the words and figures following, to-wit:

No. 798.

THE UNITED STATES OF AMERICA

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN, etc.

This day this cause again came on to be heard, and came the defendants, Emma Harris, alias Emma R. Smith, and Bessie Green, pursuant to the tenor of their recognizance heretofore given
 9 herein, and by their Attorneys, and came the District Attorney on behalf of the United States, and having been arraigned at the bar of this Court and said Indictment read to them for plea say they are not guilty in manner and form as charged in said indictment, and for trial put themselves upon the Country, and the District Attorney doth the like:

Whereupon to try the issues joined a jury being called came to-wit: Enos Conrad, W. B. Eppert, Monte Coffin, J. P. Frederick, John C. Williamson, L. D. Elliott, William G. McIntyre, Robert T. Skinner, G. W. Waxler, John Duis, Harry N. Dickensheets, and Henry W. Suemening, who were duly empaneled and sworn herein well and truly to try the issues joined; and having heard the testimony, the arguments of Counsel and the charge of the Court, the jury retired to their room attended by an officer of this Court to deliberate upon a verdict; and after due deliberation the said jury returned the following verdict, to-wit:

We, the jury herein do find the defendant Emma Harris, alias Emma R. Smith, guilty in manner and form as charged in the Counts of said Indictment: We further find the defendant Bessie

Green guilty in manner and form as charged in the Counts of said Indictment.

(Signed)

ENOS CONRAD, *Foreman.*

To all of which the said defendants by their attorneys except and give notice of a motion for a new trial.

Thereupon the District Attorney moving for sentence the Court pronounced the following sentence, to-wit: That the said defendant Emma Harris, alias Emma R. Smith, be confined in the United States Penitentiary at Leavenworth, Kansas, for a period of four years, and that she pay the costs of prosecution; That the said defendant, Bessie Green, be confined in the Penitentiary at Leavenworth, Kansas, for a period of one year and that she pay the costs of prosecution.

Entry, 10—322.

And afterwards, to-wit: on the same day, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

No. 798.

THE UNITED STATES OF AMERICA

VII.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN.

This day came the United States Attorney on behalf of the United States, and said defendants, Emma Harris and Bessie Green being present in Court in custody of the Marshal, and said defendants having been sentenced by the Court Emma Harris to be confined in the penitentiary at Fort Leavenworth, Kansas, for a period of four (4) years, and Bessie Green having been sentenced by the Court to be confined in the penitentiary at Fort Leavenworth, Kansas, for a period of one (1) year, the costs of prosecution in each case to be taxed on the defendants, who stand committed until said costs are paid, and defendants having made application to this Court to be released upon bond pending the hearing of the motions to set aside the verdict of the jury and for a new trial and until the filing of the writ of error to the Circuit Court of Appeals for the Sixth Circuit in the event that this Court should overrule said motions for a new trial and to set aside the verdict.

It is hereby ordered by the Court that defendants each be released upon entering into a bond of Three Thousand Dollars (\$3,000.00) each, with good and sufficient sureties to be approved by the Clerk of the Court, said bond to run until the first day of April, 1911, and from day to day thereafter as the Court may order to enable counsel to prepare and to file a petition for writ of error and assignment of error to the United States Circuit Court of Appeals for the Sixth Judicial Circuit in the event that said motions for new trial be overruled.

Recognizance.

And afterwards, to-wit: on the same day the following Recognizance was filed in the Clerk's Office of said Court clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

Be it Remembered, That on this 17th day of February, A. D. 1911, before me, B. E. Dilley, Clerk of the United States District Court, within and for the district aforesaid, duly appointed as such by the said Court personally came Emma Harris, alias Emma R. Smith as principal and Clifford B. Reeves, Charles Albert as sureties, and jointly and severally acknowledged themselves to owe the United States of America in the sum of Three Thousand and no-100 (\$3,000) Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to-wit: The condition of this recognizance is such, that if the said Emma Harris, alias Emma R. Smith shall personally appear before the District Court of the United States, in and for the District aforesaid, at Cincinnati, Ohio, on April 1st, 1911, and from day to day thereafter as the Court may order, to enable counsel to prepare and to file a petition for a writ of error and assignment of error to the United States Circuit Court of Appeals for the Sixth Judicial Circuit, in the event that the motion for new trial in this case be overruled, said Defendant having been found guilty by the Jury and sentenced by the Court to be confined in the United States Penitentiary at Leavenworth, Kansas, for a period of Four years (4) and to pay the costs of prosecution, in case No. 798, entitled The United States of America vs. Emma Harris, alias Emma R. Smith, and Bessie Green, and then and there abide the further order of said Court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

Mrs. EMMA R. SMITH.	[SEAL.]
CLIFFORD B. REEVES.	[SEAL.]
CHAS. ALBERT.	[SEAL.]

Taken and acknowledged before me on the day and year first above written.

[SEAL.]

B. E. DILLEY,

Clerk U. S. District Court, Southern District of Ohio,
By HARRY F. RABE, Deputy.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Clifford B. Reeves, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Twenty-five Thousand and no-100 Dollars in real estate in my own name, situate in the County of Hamilton in said District.

CLIFFORD B. REEVES.

Sworn to before me the 17th day of February, 1911.

[SEAL.]

HARRY F. RABE,

Deputy Clerk U. S. District Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, ss:

I, Charles Albert one of the sureties above named do solemnly swear that after paying my just debts and liabilities, I am worth Fifty Thousand (\$50,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

CHAS. ALBERT.

Sworn to before me the 17 day of Feb'y, 1911.

[SEAL.]

HARRY F. RABE,

Deputy Clerk U. S. District Court, S. D. O.

Recognizance.

And afterwards, to-wit: on the same day, the following Recognizance was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

12 THE UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

Be it remembered, That on this 17th day of February, A. D. 1911, before me, B. E. Dilley, Clerk of the United States District Court, within and for the District aforesaid, duly appointed as such by the said Court personally came Bessie Green as principal and Clifford B. Reeves and Charles Albert as sureties, and jointly and severally acknowledged themselves to owe the United States of America in the sum of Three Thousand and no-100 (\$3,000) Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to-wit:

The condition of this Recognizance is such, that if the said Bessie Green shall personally appear before the District Court of the United States, in and for the District aforesaid, at Cincinnati, Ohio, on April 1st, 1911, and from day to day thereafter as the Court may order to enable counsel to prepare and to file a petition for a writ of error and assignment of error to the United States Circuit Court of Appeals for the Sixth Judicial Circuit, in the event that the motion for new trial in this case be overruled, said Defendant having been found guilty by the Jury and sentenced by the Court to be confined in the United States Penitentiary at Leavenworth, Kansas, for a period of One Year (1) and to pay the costs of prosecution, in case No. 798, entitled The United States of America vs. Emma Harris, alias Emma R. Smith, and Bessie Green, and then and there abide the further order of said Court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

BESSIE GREEN.
CLIFFORD B. REEVES.
CHAS. ALBERT.

[SEAL.]

Taken and acknowledged before me on the day and year first above written.

[SEAL.]

B. E. DILLEY,
Clerk U. S. District Court, Southern District of Ohio,
By HARRY F. RABE,
Deputy.

UNITED STATES OF AMERICA,

Southern District of Ohio, ss:

I, Clifford B. Reeves, one of the sureties above named, do hereby solemnly swear that after paying my just debts and liabilities, I am worth Twenty-five thousand and no-100 Dollars in real estate in my own name, situate in the County of Hamilton in said District.

CLIFFORD B. REEVES.

13 Sworn to before me the 17th day of February, 1911.

[SEAL.]

HARRY F. RABE,
Deputy Clerk U. S. District Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, ss:

I, Charles Albert one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Fifty Thousand (\$50,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

CHAS. ALBERT.

Sworn to before me the 17 day of February, 1911.

[SEAL.]

HARRY F. RABE,
Deputy Clerk U. S. Circuit Court, S. D. O.

Motion for New Trial.

And afterwards: to-wit: on the 18th day of February, A. D. 1911, came the defendants by their Attorneys and filed in the Clerk's Office of said Court, a certain Motion for new trial in this cause, which said Motion for new trial is clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 798.

UNITED STATES OF AMERICA, Plaintiff,

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN,
Defendants.

Motion for New Trial.

Now come the defendants and by their attorneys move for a new trial in the above cause for the following reasons, to-wit:

First. The verdict is not sustained by the weight of the evidence and the law.

Second. The Court erred in rejecting evidence offered by the defendants and to which rejection the defendants at the time excepted.

Third. The Court erred in admitting evidence offered by the plaintiff over the objection of the defendants and to which admission defendants at the time excepted.

Fourth. The Court erred in charging the Jury.

LITTLEFORD, JAMES, FROST & FOSTER,
Attorneys for Defendants.

Motion in Arrest of Judgment.

And afterwards, to-wit: on the 21st day of February, A. D. 1911, came the defendants by their Attorney and filed in the
14 Clerk's Office of the Court aforesaid, a certain Motion in Arrest of Judgment, clothed in the words and figures following, to-wit:

Motion in Arrest of Judgment.

United States District Court, Southern District of Ohio.

UNITED STATES OF AMERICA

VS.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN.

And now come the defendants and move the Court to arrest judgment on each and every count in the indictment herein upon which the defendants were convicted, because the facts therein stated do not constitute an offense against the laws and statutes of the United States.

WM. LITTLEFORD,
Attorney for Defendants.

Entry, 10—329.

And afterwards, to-wit: on the 28th day of February, A. D. 1911, an Entry was made upon the Journal of said Court in said cause, which said Entry is clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA

VS.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN.

Entry.

Upon application of the United States Attorney, and the Court being informed that the U. S. Penitentiary at Leavenworth, Kansas, is not a convenient nor proper place of imprisonment for female

prisoners, and that the Attorney General of the United States has designated the Kansas State Penitentiary at Lansing, Kansas, as the place of imprisonment of the defendants herein;

It is Therefore Ordered, That the former entry of sentence in this case be so modified as to make the said Kansas State Penitentiary, at Lansing, Kansas, the place of imprisonment of said defendants, Emma Harris, alias Emma R. Smith, and Bessie Green; and that in all other respects said entry of sentence shall remain the same.

Entry, 3—334.

And afterwards, to-wit: on the 11th day of March, A. D. 1911, an entry was made upon the Journal of said Court in said cause, which said Entry is clothed in the words and figures following, to-wit:

No. 798.

THE UNITED STATES OF AMERICA

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN.

15 Upon application of the defendants and for good cause shown leave is hereby granted to them to file their Supplemental Motion in arrest of judgment and the same is filed forthwith.

Supplemental Motion in Arrest of Judgment.

And afterwards, to-wit: on the same day, came the defendants by their Attorney and filed in the Clerk's Office of the Court aforesaid, a certain Supplemental Motion in this cause, which said Supplemental Motion is clothed in the words and figures following, to-wit:

Supplemental Motion in Arrest of Judgment.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN,
Defendants.

Now comes the defendants, by leave of Court first had and obtained and file this their supplemental motion in arrest of judgment in this cause, for the following reason, that the Statutes which the defendants are charged with violating are unconstitutional.

MAX LEVY,
Attorney for Defendants.

Entry, 10—334.

And afterwards, to-wit: on the same day, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following to-wit:

Entry Overruling Motion in Arrest of Judgment and Supplemental Motion in Arrest of Judgment.

No. 798.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

EMMA R. HARRIS, alias EMMA R. SMITH, and BESSIE GREEN,
Defendants.

This cause came on to be heard upon the motion in arrest of judgment and supplemental motion in arrest of judgment, herein filed by the defendants, on the arguments of counsel and the Court being fully advised in the premises, find- that the said motion in arrest of judgment and supplemental motion in arrest of judgment are not well taken, and overrules the same, to which ruling of the Court defendants except.

16

Entry, 10—334.

And afterwards, to-wit: on the 11th day of March, A. D. 1911, an Entry was made upon the Journal of said Court in said cause, which said Entry is clothed in the words and figures following, to-wit:

Entry Overruling Motion for a New Trial.

No. 798.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

EMMA R. HARRIS, alias EMMA R. SMITH, and BESSIE GREEN,
Defendants.

This cause came on to be heard upon the motion for a new trial herein filed by the defendants, on the arguments of counsel, and the Court being fully advised in the premises, find- that said motion is not well taken, and overrules the same, to which ruling of the Court the defendants except.

Entry, 10—339.

And afterwards, to-wit: on the 21st day of March, A. D. 1911, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

No. 798.

THE UNITED STATES OF AMERICA

vs.

EMMA R. HARRIS, alias EMMA R. SMITH, and BESSIE GREEN.

This day came the defendants, Emma Harris, alias Emma R. Smith, and essie Green, by their attorneys and presented their Bill of Exceptions, and the same being examined and found to be true, is hereby allowed, signed, sealed, ordered to be and the same is hereby made part of the record of this cause, and filed as provided by law.

Bill of Exceptions.

Thereupon came the defendants, by their attorney, and filed in the Clerk's Office of the Court aforesaid, their certain Bill of Exceptions in this cause, which said Bill of Exceptions is clothed in the words and figures following, to-wit:

Bill of Exceptions.

United States District Court, Southern District of Ohio, Western Division.

No. 798.

UNITED STATES OF AMERICA, Plaintiff,

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN,
Defendants.

17 Be it remembered that this cause came on for hearing on Friday morning, February 17, 1911, before Hon. Howard C. Hollister, Judge; the United States of America being represented by Messrs. Sherman T. McPherson and Thos. Darby; the defendants being present in person and represented by Mr. Wm. Littleford.

Thereupon counsel for defendants filed a motion to quash, which motion to quash the court, upon consideration, overruled, to which action of the court the defendants, and each of them, by their counsel, then and there duly excepted.

Said motion to quash is hereto attached and made part hereof.

Entry overruling motion to quash is hereto attached and made part hereof.

Thereupon counsel for defendants filed a demurrer, which demurrer the court, upon consideration, overruled, to which action of the court the defendants, through their counsel, then and there duly excepted.

Said demurrer is hereto attached and made part hereof.

Entry overruling demurrer is hereto attached and made part hereof.

Thereupon the defendants, through their counsel, moved for a separate trial for the two defendants jointly indicted, for the reason that it does not appear from the indictment that they acted jointly, or as conspirators. That while it may have been that each of them did the acts alleged, *but* each acted separately.

Mr. McPHERSON: The indictment charges but one act, and it is charged that they both did it.

The COURT: Three counts.

Mr. McPHERSON: Three counts and each charges the same thing. Motion overruled.

Mr. LITTLEFORD: I wanted it to appear that they were acting together.

The COURT: It charges that they both did it. It is clearly charged that they both did it.

Exception noted by counsel for defendants.

Thereupon the defendants were arraigned, and each of them entered a plea of not guilty.

Thereupon the defendants, through their counsel, moved that the government elect upon which of the three counts of the indictment it will proceed to trial.

Motion overruled; exception noted by counsel for defendants.

18 Thereupon the talesmen were examined upon their voir dire.

Thereupon the jury was sworn.

Thereupon the case was stated to the jury by respective counsel.

Thereupon the United States of America, to maintain the issues on its part, called as a witness, STELLA LARKINS, who being first duly sworn, testified as follows:

By Mr. McPHERSON:

Q. Give your full name to the jury?

A. Stella Larkins.

Q. Where do you live?

A. Charleston, West Virginia.

Q. How old are you?

A. 21.

Q. How long have you been living in Charleston, West Virginia?

A. Well, I have been there I guess—well, I don't know; it is about three or four years.

Q. Where were you living in Charleston, West Virginia, in September?

A. I was at 718 Young Street.

Q. What is 718 Young Street in Charleston?

A. It is a sporting house.

Q. Were you living there?

A. Well, I was boarding there; yes, sir.

Q. How long had you been in that house?

A. I had been in that house a little over a week.

Q. Previous to that where were you?

A. Before that time?

Q. Yes.

A. I was at 302 North Rand Street before I went to this place.

Q. Was that a sporting house, too?

A. Yes, sir.

Q. Are you acquainted with Bessie Green, the defendant over there?

A. Yes, sir.

Q. Where did you make her acquaintance?

A. In Charleston, W. Virginia.

Q. When?

A. I don't know.

Q. About when?

A. Well, I can't tell you just exactly when it was, but it was somewhere about the last of September or the first of October.

Q. Where did you meet her then?

19 A. At 718 Young Street.

Q. What time of the day; just tell the jury how you happened to meet her?

A. Well, I was up town; I had gone out and I had telephoned down to the house; I telephoned down to the house to see—there were some girls went to see some friends—to see if the girls had arrived back; and there was a woman answered the phone, and she said, "there is some one here who wants to see —," and then I came back to the house and when I arrived I met Miss Bessie Green.

Q. What happened?

A. We talked.

Q. What did you talk about?

A. We talked about coming to Cincinnati, and about Cincinnati if it is a good place to make money.

Q. She said a girl wanted to see you, what did she say to you when first you met her?

A. I went in and they said this was Bessie Green, and we commenced talking and we talked about coming to Cincinnati.

Q. Just speak about that first; give the jury the conversation, if you remember, who spoke first about it?

A. I don't just exactly remember who was the first one spoke about it.

Q. What was said about coming to Cincinnati?

A. Well, she said if I would come she would pay my bill.

Q. What bill?

A. Well, I owed a bill to the landlady at 718 Young Street.

Q. How much?

A. It was \$30 and something; we had counted it all up.

Q. She said she would pay your bill?

A. Yes, sir.

Q. What agreement did you reach at that time—then did you agree to come?

A. Yes, sir.

Q. Now, what time of the day was that?

A. Well, it was along, I don't know just exactly, it was along 5 or somewhere—I don't know.

Q. She left there to go some place else?

A. Yes, sir; she went over to another house, and she said she would be back for supper, and she came back and ate supper there.

Q. What arrangements were made for you to go?

20 A. I went ahead and packed my trunk and things and we came on to Cincinnati.

Q. After you got your trunk packed, what did Bessie Green do about the payment of your bills that you owed the landlady?

A. She paid \$15 there and she said she would send the rest of it
C. O. D.

Q. Where was your trunk to be sent to?

A. To George Street, to Emma Harris's, 410 George Street.

Q. And that arrangement was made while she was there in Charleston, West Virginia?

A. Yes, sir.

Objected to as leading, and motion made to strike out answer; objection and motion sustained.

Q. State what occurred after you made arrangements to have your trunk sent to Cincinnati?

A. Well I got dressed, it was a little after twelve o'clock and we left there at about one o'clock.

Q. With whom?

A. Bessie Green and I.

Q. Where did you go?

A. We took a taxicab and went to 308 North Rand Street.

Q. What kind of a place?

A. Sporting house.

Q. Who did you get there?

A. Nellie Stover.

Q. And there what, if anything, occurred?

A. Well, she got dressed and went with us.

Q. The three of you in the same hack?

A. Yes, sir.

Q. Where did you go?

A. We went to the depot.

Q. What depot?

A. C. & O. depot.

Q. At Charleston, West Virginia?

A. Yes, sir.

Q. And what occurred there?

A. The train was an hour and something late; the train is supposed to leave there at 2:25, and the train was an hour late and we walked around and went to the restaurant and got lunch and we came back and got our tickets.

Q. Just tell the jury how they were gotten?

A. I got the ticket but Bessie Green bought it.

Q. Explain that to the jury just how that was?

21 A. She gave me the money to get the ticket.

Q. And after she gave you the money you bought what?

A. The ticket; the ticket was five dollars and five cents.

Q. And that ticket was to where?

A. To Cincinnati, Ohio.

Q. Now, do you know anything about the ticket—who bought the ticket for the Stover girl?

A. No, sir; I know nothing about that.

Q. After you got the ticket, what, if anything, did you do when the train came along?

A. We got on the train.

Q. And where did you go?

A. Came to Cincinnati.

Q. What time did you get to Cincinnati?

A. It was along ten o'clock.

Q. The next day?

A. No;—yes, sir—the same day.

Q. 10 o'clock a. m.,—in the forenoon?

A. Yes, sir.

Q. Now, after you started did you stop anywhere between Charleston until you arrived in Cincinnati, after you got on the train?

A. No, sir.

Q. Now, you arrived in Cincinnati about 10 o'clock in the morning, and what, if anything, did you do after you arrived here in Cincinnati?

A. We went to Emma Harris's, 410 George Street.

Q. Direct from the depot?

A. Yes, sir.

Q. And you got there about noon time?

A. Yes, sir.

Q. And when did you first see Emma Harris?

A. Well, Emma Harris she came up to the room and talked to us.

Q. What did she say?

A. Well, she said she was glad to see us, I guess.

Objected to; objection sustained.

Q. What did she say?

A. She said it was a good place to make money.

Counsel for defendants objects on the ground that the indictment charges first that these women caused to be transported to Cincinnati these two girls, and secondly, that they procured and obtained tickets to bring them here. Third, that they enticed, induced and persuaded the into come here. If the conspiracy is ended after they had arrived in Cincinnati then that's the end of the story. In other words if the door is open for the conversation of the Harris woman with these girls after they arrived in their room, it is also open for half an hour, or an hour, or a day, or a week, or it is in the discretion of the judge too say when the door is closed.

(Counsel referred to case of Long vs. Lemerick, against the State, 14 Circuit Court, 207.)

Motion was also made by counsel for defendants to strike out.

The COURT: Who was present at this time?

A. After we arrived to Mrs. Harris'?

Q. Yes, when she said what you say she said who was there in the room?

A. There was Nellie Stover, and Bessie Green, I think she was there, and myself.

Motion overruled; exception noted by counsel for defendants.

By Mr. McPHERSON:

Q. What else was said in that conversation?

Same objection; same ruling, exception noted by counsel for defendants.

A. I don't remember just what was said, but we went and ate breakfast then after we arrived. I say after she got through talking we went and ate breakfast and we went on back upstairs and we never seen Mrs. Harris no more.

Q. You mean that day?

A. Until we came downstairs at night for supper.

Q. Were you given rooms in the house, or assigned rooms?

A. Yes, sir; she gave us rooms.

Q. When you came down that night did you see her that night?

A. Mrs. Harris?

Q. Yes.

A. Yes, sir.

Q. What, if anything, did you do that night?

A. Well, we went down stairs.

Q. Speak so the jury can hear you?

A. We went down stairs and went into the parlor.

Q. Did you have any callers that night?

A. Yes, sir.

Q. What kind of callers—men?

A. Yes, sir.

23 Q. Did you meet men that night?

A. Yes, sir.

Q. And did you go to the rooms with them?

A. Yes, sir; I did.

Q. And what was the charge for meeting men there in that house, for receiving men in that house?

A. What was the charge?

Q. Yes?

A. Well, it was two dollars.

Q. What time did your trunk, do you know, reach you?

A. It arrived there the next day.

Q. How did it come, do you know?

A. It came C. O. D. \$15.

Q. By express?

A. Yes, sir.

Q. Did you pay that \$15?

A. No, sir; I did not.

Q. Who did?

A. Mrs. Emma Harris.

Q. Now, how about after you got there, was there an account kept with you there in that house?

A. Yes, sir.

Objected to; question withdrawn.

Q. Now, what conversation, if any, did you have with Emma Harris about your trunk, and about the car fare that Bessie Green bought your ticket with to bring you from Charleston?

Objected to as incompetent on the ground that the conspiracy was at an end, and Bessie Green was not responsible for what Emma Harris did, or said.

Objection overruled; exception noted by counsel for defendant.

Q. You then started to speak about the conversation you had with Emma Harris?

A. Miss Harris said she would put it down against me on the book.

The COURT: You have to talk louder.

A. Miss Harris said she would put it down against me on the book.

By Mr. McPHERSON:

Q. Did she ever put it down on the book afterwards?

A. Objected to for the same reasons.

A. Yes, sir.

Motion made to strike out the answer for the same reasons. motion overruled; exception noted.

Q. Who was this you are speaking about?

24 A. Emma Harris.

Q. What did you see in that book?

Objected to because the question calls for secondary evidence of a book account; objection overruled; exception overruled; exception noted by counsel for defendant.

A. Well, it was the railroad fare and the trunk, the money was put down against me.

Q. Which railroad fare do you mean?

Objected to for the same reason; objection overruled; exception noted by counsel for defendants.

A. The railroad fare was something like \$5.05.

Q. How much?

Objected to for the same reason; objection overruled; exception noted by counsel for defendants.

A. \$5.05.

Q. And how much of a debt was put against you?

Objected to for the same reason; objection overruled; exception noted by counsel for defendants.

A. It was \$30 and something I owed at Charleston, and the expressage.

Q. \$30?

Objected to for the same reason; objection overruled; exception noted by counsel for defendants.

A. And \$5.05 railroad fare.

Q. \$30; the expressage and \$5.05 railroad fare?

Objected to for the same reason, same ruling, exception noted.

A. Yes, sir.

Q. So that the second day after you were there you started in with a debt against you of \$38 or \$39?

A. Yes, sir; something along there.

Q. Now, the first night that you were there how many men did you stay with that night?

A. No, sir; I don't remember.

Q. Were there very many?

A. No, sir.

Q. Was it enough to pay for that debt that was owing by you?

A. No, sir.

Q. What was your purpose in leaving Charleston?

A. What was my purpose in leaving Charleston?

Q. Yes; what did you intend to do in Cincinnati when you left there?

A. I intended to come into a house.

Q. You intended what?

A. I knew I was coming into a house when I left Charleston.

25 Q. And what house do you know you were going into when you left Charleston?

A. Emma Harris'.

Q. When you say a house, you mean a house of prostitution, do you?

A. Yes, sir.

Q. By the way when the trunk came did you see any tags upon your trunks?

A. Yes, sir.

Q. What were those tags?

A. One tag was marked "C. O. D. \$15.05."

Objected to.

Q. I hand you two Adams Express Company tags, and ask you if you can identify them?

A. Yes, sir, I can identify them.

Q. What are they?

A. They were on my trunk.

Q. And how long did they stay on your trunk?

A. They were on my trunk until I left; one of them I took off and Mr. Watson took the other one off.

Q. This gentleman here? (Pointing to Mr. Watson.)

A. Yes, sir; he took one off, and I took the other one off.

Q. Which one did you take off, do you know?

A. I don't remember which one I took off.

(Cards were here marked by the stenographer, Ex. A and Ex. B, respectively, and the same are hereto attached and made part hereof.)

Mr. McPHERSON: This is "Form 150. Include in address County and State, and in Cities, Street and Number. Adams Express Company."

Objected to by counsel for defendants as hearsay testimony; objection sustained.

Cross-examination.

By Mr. LITTLEFORD:

Q. What is your real name?

A. What is my real name?

Q. Yes.

A. Well, I go by the name of Stella Larkins.

Q. I didn't ask you that; I asked you what is your real name?

A. I don't know that I have got any other name.

Q. You don't know that you have any real name—you have some real name that you were born with, what is that name?

A. That I was born with—well, I don't know exactly—I always went by the name of Miss Stella Larkins.

Q. I want to know you real name?

26 The COURT: Can you answer?

A. I always went by the name of Stella Larkins ever since I went in bad.

The COURT: Answer the question?

A. Well, my name is,—my right name I went by is Estella Bowles.

By Mr. LITTLEFORD:

Q. Estella what?

A. Estella Bowles.

Q. How do you spell it?

A. B-o-w-l-e-s.

Q. You mean that is your father's name?

A. Yes, sir; that is my father's name.

Q. And that is your real name?

A. Yes, sir.

Q. And where is your home?

A. Charleston, West Virginia.

Q. Were you born there?

A. No, sir; I wasn't born there.

Q. Where were you born?

A. I was born in Huntington, West Virginia.

Q. Now, do your parents live there now?

A. Do my parents live there now?

Q. Yes.

A. I guess they do; I haven't been at home for quite a while and I guess they are there.

Q. Your father's name is Bowles?

The COURT: She said so.

Mr. LITTLEFORD: She said she went by that name, and I don't know whether she meant it.

Q. Where did you first begin the life that you lead?

A. In Charleston, West Virginia.

Q. Did you go there from Huntington?

A. Yes, sir, I was born in Huntington, but I didn't stay in Huntington all my life.

Q. Where did you go to from Huntington?

A. I don't remember.

Q. When did you leave home?

A. When did I leave home; well, I haven't been at my home for quite a while.

Q. Won't you tell us that?

A. I don't remember just when it was that I left home.

Q. Were you 15 or 18 years of age?

A. No, sir; I wasn't 15 years of age.

Q. How old were you?

A. I don't remember; I was about 14 I guess.

27 Q. You were about 14?

A. Yes, sir.

Q. Now, where did you go when you were 14?

Objected to.

The COURT: There is a reasonable amount of that which is admissible; I think you have got enough of that. I make the suggestion now. I will not say I will not permit any more of it but there is a limit to it.

By Mr. LITTLEFORD:

Q. I ask you once more after you left your home when did you begin to be a sporting woman?

A. Well, it was a long while after I left home; I don't remember exactly how long it was but it was a long while.

Q. How long were you in Charleston leading that life?

A. I guess about six months.

Q. Had you been leading it anywhere else?

A. No, sir; I hadn't.

Q. Had you been leading it in Charleston?

A. Yes, sir.

Q. How long did you live in Charleston altogether?

A. How long?

Q. Yes.

A. I don't remember; I was there three or four years; I don't remember exactly how long it was.

Q. What else did you do in Charleston?

A. I worked in Charleston.

Q. Before you went to a sporting house?

A. Yes, sir.

Q. Whose house were you at when you met Bessie Green?

A. Mary Brown's house.

Q. How long had you been there?

A. A little over a week.

Q. And where had you been before that?

A. At 302 North Rand Street.

Q. And how long had you been there?

A. I don't remember but it wasn't so long.

Q. Well, had you been moving about?

A. No, sir; that is the only place I started from and I was only at that other place a little over a week.

Q. Did you say that you had not been leading a sporting life in any other city but Charleston?

A. No, sir; I hadn't.

Q. Had you any intention of coming to Cincinnati before you met this girl?

28 A. My intention was to come to Cincinnati but it wasn't right then; I was coming to Cincinnati later on, but I had no idea of coming right then.

Q. With whom had you talked previously about coming to Cincinnati?

A. Well, now, with no particular person.

Q. But you had made up your mind before you met this girl to come to Cincinnati?

A. Yes, sir; I did.

Q. That was of your own free will that you had reached that conclusion?

A. Yes, sir; it was.

Q. No one had persuaded you to reach that conclusion?

A. No, sir; not at that time.

Q. No one had induced you to reach the conclusion to come to Cincinnati, had they?

A. Not at that time they hadn't.

Q. You came voluntarily; you came of your own free will?

A. She asked me to come.

Q. Well, I say you came of your own free will?

A. I wouldn't have come if she hadn't paid my bill.

Q. You wouldn't have come if she had not paid your bill?

A. No, sir; I would; because I couldn't; I was indebted to the landlady and I couldn't come.

Q. You were making money every night up there, weren't you?

A. Yes, sir; I was making money every night but I spent it.

Q. You were making money every night but you spent it?

A. Yes, sir.

Q. You were there in a house and where you were making money and you had the intention to come to Cincinnati, now you lay the blame on this girl that you came to Cincinnati?

A. She asked me to come and she said she would pay my bill.

Q. You were making money of your own?

A. Yes, sir; I was making money of my own but I owed a bill of my own.

Q. You haven't told the jury yet how you came to make up your mind to come to Cincinnati?

A. I don't know just how I came to make up my mind to come to Cincinnati.

29 Q. Somebody must have talked to you about Cincinnati, or you must have found out something about Cincinnati if you made up your mind of your own accord to come to Cincinnati?

A. Nobody had to talk to me, you can change places without anybody talking to you.

Q. So you must have made up your mind without anybody talking to you?

A. She comes and she calls for me and she said she would pay my bill if I would come to Cincinnati and I came to Cincinnati with her.

Q. I am talking before she came to Charleston before you ever saw her?

A. Well, I just said, I thought of coming to Cincinnati, but I didn't know just exactly what I was going to do.

Q. I am asking you whether you made up your mind to come to Cincinnati before you ever saw this girl? Why you made up your mind to come to Cincinnati before you ever saw this girl?

A. I don't know why I did, but I did.

Q. After you stayed in the Harris house a little while you left?

A. No, sir; I did not.

Q. Never left that house?

A. No, sir.

Q. Stayed there all the time?

A. Yes, sir; stayed there all the time.

Q. How long were you there?

A. About two months and a half, until this trouble occurred.

Q. Who came there to get you out of the house?

A. Who took me out?

Q. Yes?

A. Mr. Watson took me out.

Q. Who is he?

A. This fellow sitting right here.

Q. And had he come to see you in the house?

A. He came to see and asking if we were from West Virginia, and all about this and I tried to lie to him to get out of it, and I seen I couldn't and I told the truth about it.

Q. You mean you told some lies about it?

A. On the first day to get out of the trouble.

Q. Where did you go with him from that house?

A. To the Place of Detention.

Q. And where have you been since then?

30 A. Where have I been since then?

Q. Yes?

A. I have been no place only in the Troy jail.

Q. In the Troy jail?

A. Yes, sir.

Q. How long have you been in the Troy jail?

A. I was put in there on the 20th of December.

Q. Who did you talk to besides the gentlemen sitting here?

A. Who did I talk to besides him?

Q. Yes; about your testimony?

A. I don't remember who I talked to.

Q. Did you talk to anybody at the house of detention?

A. No, sir; not as I remember I did.

Q. You admit you told some lies at first, when did you cease to tell some lies?

A. I seen I had to take the stand, and I told Mr. Watson when he first asked me that I had come to Cincinnati on my own accord, and he said, "don't lie to me," and I went on, and I never said anything more; and he came back in a few days and he took me to the place of detention.

Q. After you told him you wanted to come to Cincinnati of your own accord he said to you not to tell lies to him; now, you did testify, under oath, at the former trial here, didn't you?

A. I testified, yes, sir.

Q. You were under oath then, weren't you?

A. I testified the truth.

Q. I say you were under oath then, weren't you?

A. I testified the truth. Well, I guess I was.

Q. You testified as follows then, didn't you: "Well, I was out and when I went in I met her." Let me go back a little bit. This is the account before the Commissioner about this matter before, it: "A. I don't know just exactly the date when she came—I don't exactly know the time when she came; it was in the evening. Q. Did she have a conversation with you that evening? A. Well, I was out and when I went in I met her and so we had a talk for a little while."—

A. (Interrupting.) I was up town and I got a telephone message that there was some one there, for me to go home, for some one wanted to see me, and when I came in I saw Bessie Green.

Q. A while ago you said that Bessie Green telephoned for you?

Objected to.

31 Q. Then somebody else telephoned, Bessie Green didn't, so we all understand you. Now, when you came in you found Bessie Green there?

A. Yes, sir.

Q. (Reading:) "Then I talked with her for a little while, and, of course, I wanted to come to Cincinnati." You so testified, didn't you?

A. Well, I was thinking of coming to Cincinnati, yes, sir.

Q. I don't hear that?

A. Yes, sir.

Q. Then you did want to come to Cincinnati, did you?

The COURT: It is alleged in the indictment she came with her own consent.

Mr. LITTLEFORD: It is not in the indictment that she was persuaded and enticed to come with her own consent.

The COURT: Whether "with" or "without."

By Mr. LITTLEFORD:

Q. Now, I want to ask you again if you didn't say in your testimony that you wanted to come to Cincinnati—"my intentions were to come to Cincinnati before this and I just fixed and came on."

A. Well, my intention—

Q. I didn't ask you what your intentions were; I ask you whether you said that, or not?

The COURT: The answer to that is, "yes" or "no;" just answer yes, or no. If you do not understand the question it will be put to you again.

A. I don't understand the question.

By Mr. LITTLEFORD:

Q. I will ask you if before the United States Commissioner, in this building, when your testimony was taken down by Mr. Traub, the gentleman sitting there, you didn't answer as follows: "I don't know just exactly the date when she came—I don't exactly know the time when she came; it was in the evening. Q. Did she have a conversation with you that evening? A. Well I was out and when I went in I met her and so we had a talk for a little while, and of course, I wanted to come to Cincinnati—my intentions were to come to Cincinnati before this and I just fixed and came on." And I ask you whether you did so testify?

A. Yes, sir; I so testified.

Q. You didn't?

A. Yes, sir; I did.

32 Q. Now, I will ask you if you didn't testify upon that same occasion, and I am reading from page 5 as follows: "Q. Where did she say to come to? A. She didn't mention any name, there wasn't any mentioned. Q. Did she mention Emma Harris? A. No." Did you so testify?

A. Yes, sir; I guess I did.

Q. How?

A. Yes, sir; I guess I did.

The COURT: Speak out louder.

A. Yes, sir; I guess I did.

By Mr. LITTLEFORD:

Q. Now, when you were asked about your tickets, did you testify as follows: "Q. Was Nellie with you at that time? A. Yes, sir. Q. And who bought her ticket for her? A. I don't know; I just bought my own ticket; I don't know who bought it for her. Q. Were you acquainted with Nellie before you came to Cincinnati? A. No, sir; I seen her once or twice. Q. But you weren't friends? A. No, sir." Did you so testify?

A. Yes, sir; I did.

Q. Now, I understood you to say a while ago that you had made

up your mind to come to Cincinnati, but that you had talked to no one before you came to Cincinnati *with* this girl; I will ask you if you testified: "Didn't you have a colored woman sewing for you by the name of Georgia? A. Yes, sir. Q. Did you ever talk to her about Cincinnati? A. Did I ever talk to her about Cincinnati? A. Yes. A. Why, I never talked to her no further than to say she knew Cincinnati and it was a good town." Did you so testify?

A. Yes, sir; I testified to that.

Q. Now: "Did you express a desire to come to Cincinnati to her? A. Yes, sir; I said my intention was to come to Cincinnati." You told her that?

A. Yes, sir, I told her that my intentions were to come to Cincinnati, yes, sir.

Q. So that before you ever saw this girl you had talked to the colored woman named Georgia, had made up your mind to come to Cincinnati, and she had talked to you to come to Cincinnati, is that true, or not?

A. Is it true?

Q. Yes, is it true?

A. Well, she didn't talk so much about Cincinnati; she said Cincinnati was a nice town, that is about all she said.

Q. Who said so?

A. This colored lady.

33 Q. Now, I will ask you if you ever received any communication from the other defendant, Miss Harris?

A. From her?

Q. Yes.

A. Not before.

Q. I mean while you were up there?

A. While I was in Charleston?

Q. Any letters, or anything?

A. No, sir; I never.

Q. Didn't you also testify before: "Now, you never got any letter, or any paper, or any kind of a communication from Mrs. Harris? A. No, sir; I never."

Objected to; objection sustained.

Q. Now, again; I will ask you, did you testify as follows: "A. There was the landlady, I guess; I guess the landlady was in there.

Q. Did they hear your conversation? A. We didn't talk very much and I told her I was coming to Cincinnati, and I went downstairs with the landlady and she told me not to come. Q. You wanted to come to Cincinnati? A. Yes, sir." You so testified before, didn't you?

A. I so testified before; yes, sir.

Q. So, according to that Bessie Green didn't talk very much to you; did she?

A. She said if I would come she would pay my bill.

Q. Didn't you testify also as follows: "Q. But your intention was before that to go to Cincinnati? A. Yes, sir; my intention was to come to Cincinnati and I was having a dress made in the meantime to come to Cincinnati."

A. Yes, sir; I was having a dress made.

Q. So you were having a dress made?

A. Yes, sir; but I wasn't coming to Cincinnati right away before because I had my debt to pay and I couldn't come before it was paid.

Q. I say that was before you saw Bessie Green that you had the dress made to come to Cincinnati?

A. Yes, sir.

Redirect examination.

By Mr. McPHERSON:

Q. You also testified before the Commissioner that Bessie Green gave you the \$5.05 to buy the ticket?

Objected to.

A. I bought my own ticket but she gave me the money to buy it.

Q. Didn't you testify to that in the court below?

34 A. Yes, sir.

Q. I mean before the Commissioner?

A. Yes, sir; I did.

Q. When you say you came over the C. & O. railroad, what railroad do you mean? Give us the full name of the railroad.

A. Well the C. & O. railroad, that is all I know.

Q. What does the C. & O. stand for?

(No answer. Question withdrawn.)

By the COURT:

Q. You say you were in that house in West Virginia before you came here for about a week?

A. A week it was; and I was in that house on Young street.

Q. You owed that landlady \$30?

A. Yes, sir.

Q. Did that accumulate in that time?

A. What time I was over there?

Q. Yes.

A. Yes, sir.

And also NELLIE STOVER, who being first duly sworn, testified on behalf of the United States of America as follows:

Direct examination.

By Mr. McPHERSON:

Q. Give your full name to the Court and jury?

A. Nellie Stover.

Q. How old are you Miss Stover?

A. 21.

Q. And where is your home?

A. In West Virginia.

A JUROR: Miss Stover, please speak out louder.

By Mr. McPHERSON:

Q. You have been sick for some time?

A. Yes sir.

Q. Where were you living the last of September or the first of October, 1910?

A. I was living at—what is it now.

Q. What city before you came to Cincinnati—Where were you?

A. I was living at Anna Parker's, 308 North Rand street.

Q. Charleston, West Virginia?

A. Yes, sir.

Q. And what kind of a place is that?

A. It is a sporting house.

35 Q. Were you there as a boarder, and inmate?

A. Yes, sir.

Q. How long had you been in that sporting house?

A. Since about the 19th of last July—July, 1910.

Q. Did you ever see the defendant here, Bessie Green?

A. Yes, sir; I seen her.

Q. When was the first time you seen her and where?

A. In Charleston, West Virginia, was the first I seen her, at Parker's.

Q. How did you happen to meet her there?

A. Well, she came there between five and six, or six or seven o'clock; I don't know which—I don't know just what time it was, and my landlady didn't want her to see me; she said she was a housekeeper.

Motion made by counsel for defendant- to strike out last part of answer; motion granted.

Q. Did you see her?

A. Yes, sir; I seen her.

Q. When you seen her, commence with that—you went down to see her in the room?

A. She was in the front parlor.

Q. What conversation did you have with her?

A. I went in and asked her if she was looking for girls and she said—

Q. What did she say?

A. And she said "yes," and I told her I would come with her if I didn't owe a bill.

Q. How much of a bill did you owe?

A. I owed fifteen dollars and a half.

Q. To whom.

A. To Anna Parker's.

Q. That is the madame who ran that house?

A. Yes, sir.

Q. What was done, or what was the conversation after she said she would pay your bill?

A. I went to pack my trunk.

Q. Did she say at that time where she was going to take you?

A. No, sir; only she was going to take me to Cincinnati.

Q. While you went on to pack your trunk did she go away?

A. Yes, sir; she went back across the street to the house where she came from.

Q. When did you next see her?

A. Well, that night about half past 12 o'clock, I suppose it was.

36 Q. Did she come to your house again?

A. She came over there in a cab and her and Stella and they came in and we went all out.

Q. Who was with her when she came to the house?

A. Stella Larkins.

Q. And you went where?

A. C. & O. Depot.

Q. What does the C. & O. stand for; can you give the full name of it?

A. No, sir; I can't.

Q. The depot across over the river and you got to the depot on the south side of the river?

A. Across over the Kanawha River.

Q. And there is only one railroad on the south side of the river?

A. Yes, sir.

Q. After you got to the depot—what time did you get to the depot?

A. I don't remember.

Q. You didn't leave the house until after midnight?

A. No, sir.

Q. After you got to the depot what, if anything was done about fare and transportation to Cincinnati?

A. Well, the train were late that night, and we walked around and got a lunch, and walked around, and Bessie bought the ticket,—then Bessie bought my ticket.

Q. Bessie Green?

A. Yes, sir.

Q. She bought the tickets?

A. Yes, sir; I never saw the ticket.

Q. Did she give it to you?

A. No, sir.

Q. What did she do with it?

A. She gave it to the conductor, I suppose.

Q. You didn't give the ticket to the conductor?

A. No, sir.

Q. Did you see her buy the tickets?

A. I saw her go to the ticket office, I suppose she bought the tickets.

Q. Well, you got upon the train, did you?

A. Yes, sir.

Q. And what time did you arrive?

Objected to; objection sustained.

Q. What did you do about purchasing transportation to Cincinnati, did you buy a ticket?

A. No, sir.

37 Q. Did Bessie Green say anything to you about buying a ticket?

A. She said she would buy my ticket.

Q. You got on the train and you got to Cincinnati?

A. Yes, sir.

Q. And some one paid your fare?

A. Yes, sir.

Objected to; objection sustained.

Q. About what time did you arrive in Cincinnati?

A. I don't remember just what time it was.

Q. Was it in the forenoon?

A. Yes, sir.

Q. Did you stop on the way anywhere between Charleston and Cincinnati?

A. No, sir.

Q. And you got out where at Cincinnati?

A. At Cincinnati.

Q. Was it the Grand Central depot?

A. We got off at Cincinnati, the C. & O. depot.

Q. And where did you go from there?

A. To Emma Harris'.

Q. Direct from the depot?

A. Yes, sir.

Q. Who was with you?

A. Bessie Green and Stella Larkins.

Q. After you got to Emma Harris' house did you see the other defendant Emma Harris, there?

A. We seen her in the afternoon.

Q. What, if any, conversation, did you have with her?

A. Well, she came in and was talking to us and I don't remember just what she was talking about.

Q. Give the substance of it, can you?

Objected to because incompetent because not made during the pendency of the conspiracy which was over; objection overruled; exception noted.

Q. Give the substance of it, can you?

A. She said she hoped we would like it there, and that it was a good house to make money and I don't just remember anything else that was talked about.

Q. Did you talk at that time about the expressage upon your trunk?

A. Yes, sir.

Q. When did you receive your trunk?

A. I came like today and the trunk came there the next day.

38 Q. You were there one day when the trunk came, the trunk came the next day after you came, isn't that correct?

A. Like I would come there yesterday morning and the trunk would come there tomorrow morning.

Q. One day intervening?

A. Yes, sir.

Q. When your trunk came, how did it come, do you know?

A. How did it come?

Q. Yes; were there any charges on it?

A. Yes, sir; there were charges on it.

Q. How much, do you know?

A. Well, there was \$15 and a half charges and besides the express.

Q. And how much was the express, do you remember?

Objected to because irrelevant and because the conspiracy had ended; objection overruled; exception noted.

Q. I don't remember.

Q. What, if any conversation, did you have with Miss Harris about the payment of these charges and expressage?

Objected to for the same reason as mentioned above; objection overruled; exception noted.

A. Mrs. Harris always kept books with us and she put down everything; everything was put down—about paying my trunk, the bill, and she put down about my fare, and I was to pay her.

Motion made by counsel for defendants to strike out answer because not responsive, and because the answer is secondary evidence of a book account; and because the conspiracy was at an end; motion overruled; exception noted.

Q. You seen that book?

A. Yes, sir; I seen that book and I seen the account.

Q. And that left a charge against you when you came there of about how much; do you know how much the charge was all told?

A. Just the trunk and express, and the ticket.

Q. And do you know how much was the expressage and your ticket?

A. I don't know just how much it was.

Q. But all those three were charged against you—What items were put down in that book, will you please tell the jury that?

A. Well, my bill was put down, what she paid the express and my fare from Charleston, West Virginia, to Cincinnati.

39 Q. Now, the first night that you came there did you meet men?

A. Yes, sir.

Q. And you took them to your room?

A. Yes, sir.

Q. And received pay for staying with them?

A. Yes, sir.

Q. And how much did you receive from each person—what was the price?

A. The price of the house?

Q. Yes?

A. It is a dollar house.

Q. And you continued to do that thereafter?

A. Continued to do that?

Q. Yes; meeting men there as long as you stayed there?

A. Yes, sir.

Q. How long did you stay at that house?

A. I stayed there from the time I came there until I went to the hospital.

Q. You got sick and they took you to the hospital?

A. Yes, sir.

Q. Cincinnati, Ohio, is the place you came to?

A. Yes, sir.

Recess until two o'clock.

Afternoon Session.

By Mr. McPHERSON:

Q. I want to ask you where you have been since Miss Emma Harris has been arrested, where have you been since that time?

A. Since Mrs. Harris was arrested?

Q. Yes?

A. In the Troy jail.

Q. How did you happen to be placed in the Troy jail, do you know for what reason?

A. I was placed in there and held as a witness.

Q. You weren't charged with any crime, were you?

A. No, sir.

Q. And the reason you were held as a witness—for what reason, do you know—were you able to give bond?

A. No, sir; I was not able to give bond.

Q. And for that reason you were placed in the Troy jail?

A. Yes, sir.

Q. To be held as a witness to testify in this case?

A. Yes, sir.

40 Cross-examination.

By Mr. LITTLEFORD:

Q. What is your real name?

A. Myrtie Watson.

Q. And where is your home?

A. In West Virginia.

Q. I mean where were you born?

A. I was born in Lincoln County, West Virginia.

Q. And your folks live there yet?

A. No, sir; they live in Kanawha County, West Virginia, now.

Q. When did you leave home?

A. I stayed at home all the time until last February.

Q. And where did you go then?

A. I went with a man.

Q. You went with a man?

A. Yes, sir.

Q. To what place?

A. To work.

Q. When did you begin your sporting life?

A. Do you mean in a house?

Q. Yes.

A. In July?

Q. In July?

A. Yes, sir.

Q. And you had been there how long in that place in Charleston?

A. In Charleston?

Q. Yes?

A. You mean in the house?

Q. Yes?

A. I had been in the house I was since July until I came to Cincinnati, Ohio.

Q. And how long was that?

A. Since I came to Cincinnati.

Q. How long was it that you were in the house there?

A. How long was it? Well, I was in the house there until I came to Cincinnati, in July to—

Q. To the end of September, was it?

A. Yes, sir.

Q. So you were there about three months?

A. Yes, sir.

Q. And you say that was the beginning of your career in a sporting life?

A. Yes, sir.

Q. Previous to that you said you had been living with a man?

A. Yes, sir; since last February.

Q. When did you live with a man?

41 A. I didn't say I was living with him, I said I went away from home with him.

Q. To what place did you go?

A. I went up the New River with him.

Q. And remained there with him?

A. Yes, sir.

Q. For how long?

A. From the last of February.

Q. Until July?

A. No, sir.

Q. Until you went to the house?

A. Well, I will tell you in a moment—wait—I stayed with him from February until April, and then I worked from April to July.

Q. You went to work from April to July?

A. I went to work from April to July and went to the sporting house, you know.

Q. And from February until April you were with this man up the New River?

A. Yes, sir.

Q. To some town?

A. Yes, sir.

Q. What town?

A. The name of the place was Raleigh—no—yes—Raleigh.

Q. Raleigh?

A. Yes, sir.

Q. You testified in this building before the United States Commissioner, didn't you?

A. Sir?

Q. You testified in this building before the United States Commissioner, under oath, didn't you?

A. Yes, sir.

Q. At the preliminary hearing?

A. Yes, sir.

Q. Now, I will ask you if, at the hearing, you testified as follows:—from page 29: "And was your railroad fare from Charleston put down against you? A. I guess it was." Did you so testify?

A. I don't understand what you say.

Q. I will read it again. I will ask you if, on that occasion, you testified as follows: "And was your railroad fare from Charleston put down against you? A. I guess it was."

A. I guess it was.

Q. Did you so testify?

A. Sir?

42. Q. Did you so testify?

The COURT: Did you say that before the Commissioner?

A. Yes, sir.

By Mr. LITTLEFORD:

Q. Now, look at me and don't look at Mr. McPherson, didn't you also testify: "Do you know that it was? A. I can't say that it was?"

A. I can't say that it was.

Q. Did you so testify before the Commissioner?

A. Yes, sir.

Q. Now, then, if you testified before the Commissioner that you couldn't say that it was, how is it that since then you testified that it was?

A. Because I think it was; I had it to pay anyhow.

Q. But before the Commissioner you said: "I can't say that it was?"

A. Yes, sir.

Q. I will read again, speaking to Bessie Green: "Q. Did she hold out any inducements to you to come, of any kind? A. No, sir. Q. Or any promise? A. No, sir. Q. It was all done on your own part; you wanted to come; didn't you? A. Yes. Q. You never knew Mrs. Harris until you came to Cincinnati? A. No, I did not." Did you so testify?

A. Yes, sir.

Q. And that was under oath?

A. Yes, sir.

Q. That was true, was it?

A. Sir?

Q. That was true, was it?

A. Yes, sir.

Q. That testimony was given how long after you had come to Cincinnati?

A. How long?

Q. Yes; how long was it after you came to Cincinnati before you were brought here to testify in this building before the United States Commissioner, do you know? The hearing was on October 28th, and you came to Cincinnati the latter part of September, so this testimony was given a few weeks after you arrived here; your memory was better then than now about these occurrences?

A. I guess it was.

Q. Again were you asked as follows:—Well, your testimony then on December 20th—that was about two and a half months after you came to Cincinnati—your memory then was better than it is now, about these matters?

The COURT: She said, "I guess it was."

43 By Mr. LITTLEFORD:

Q. Now, I will ask you again if you testified as follows: "Now, what we want to get at is this: Did Bessie Green have anything to do with your coming here? A. No, sir." You so testified, didn't you?

The COURT: Yes, or no.

A. I don't understand it.

By Mr. LITTLEFORD:

Q. You want time to read it again: "Now what we want to get at is: Did Bessie Green have anything to do with your coming here? A. No, sir." You so testified, didn't you?

A. Sir—

The COURT: He asks you if you testified that way before the Commissioner, you can answer yes, or no; then explain it if you care to. Your answer must be yes, or no. Did you testify that way or not?

A. I don't remember.

Mr. LITTLEFORD: What?

Mr. MCPHERSON: She says she don't remember.

Mr. LITTLEFORD: I will ask her to look at the transcript.

Objected to.

The COURT: We don't know anything about this paper.

Mr. LITTLEFORD: It is a transcript in typewriting of her testimony. She seems to have trouble with my question. Perhaps if she sees it, she will understand.

Objection sustained. Exception noted by counsel for defendant.

Q. Now, you claim that Bessie Green, the girl sitting here, paid any bills for you in Wheeling, West Virginia?

A. No, sir; she didn't pay any bills in Wheeling; no, sir, she didn't pay any bills there, in Charleston, West Virginia.

Q. Now, I want to ask you if the night that she was there at the house if you telephoned to her?

A. Yes, sir; I telephoned to her.

Q. How many times did you telephone to her?

A. Twice.

Q. That was about coming to Cincinnati, was it?

A. I telephoned to her and asked her if she was ready.

Q. What?

A. I telephoned to her and asked her if she was ready and when I must get ready.

Q. Well, you wanted to come?

A. Sure I wanted to come after she came there and I told her I wanted to come.

Q. Well, she talked to you about Cincinnati?

44 A. Not much about Cincinnati until after we got here.

Q. Were you dissatisfied there where you were?

A. No, sir; I wasn't dissatisfied.

Q. But after you seen her and talked to her you wanted to come to Cincinnati?

A. Yes, sir.

Redirect examination.

By Mr. McPHERSON:

Q. You also testified in that case—what else did you testify to about Bessie Green about your railroad fare and Bessie Green promising to pay your bill that you owed the landlady?

Objected to for the reason that if a witness has made statements outside of court that are contradictory to statements made on the stand it does not open the door to ask the witness if she didn't say this or that if it is not corroborated on the stand.

Question withdrawn.

Q. Judge Littleford asked you if you didn't testify upon a former occasion that Bessie Green had nothing to do with your coming here and your answer was "yes" that you so testified, now, what did you mean when you made that statement?

Objected to by counsel for defendants because the witness stated it had nothing to do with her coming here.

Objection sustained.

Q. What was the name you were known by in West Virginia?

A. Nellie Stover.

Q. And what was the name Bessie Green was known by?

A. Bessie Green.

Q. And Stella Larkins what was the name she was known by?

A. Stella Larkins.

And also LEONARD E. WATSON, who being first duly sworn, testified as follows:

Direct examination.

By Mr. McPHERSON:

Q. What is your name?

A. Leonard E. Watson.

Q. Where do you live?

A. Cincinnati.

Q. What is your business?

A. I am Secretary of The Cincinnati Vigilance Society.

Q. Do you know where Charleston, West Virginia, is?

45 A. Yes, sir.

Q. And Cincinnati, Ohio?

A. Yes, sir.

Q. And what is the full name of the C. & O. Railroad that runs from Charleston, West Virginia, to Cincinnati?

A. The full name is the Chesapeake & Ohio Railway Co.

Plaintiff rests.

Testimony for the Defendants.

Mrs. EMMA HARRIS, alias EMMA R. SMITH, one of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. LITTLEFORD:

Q. What is your full name?

A. Emma R. Smith.

Q. You have a sporting house here in Cincinnati?

A. Yes, sir.

Q. What place?

A. 410 George Street.

Q. 410 George Street. Does your co-defendant live there at your house?

A. Yes, sir.

Q. Do you remember when she left there last Summer?

A. Yes, sir; but I don't know exactly the date.

Q. How long was she gone?

A. Four or five days.

Q. Did you know why she went?

A. Why, she was a little angry at me and she said she wanted to make a change, and I said "all right," and I never asked her where she was going and she didn't tell me where she was going.

Q. Did you direct her to get any girls anywhere?

A. No, sir.

Q. Did you know that she was going to Charleston, West Virginia?

A. No, sir.

Q. Did you give her any money to get any girls?

A. No, sir.

Q. Now, when she came back were these other girls with her?

A. Yes, sir.

Q. These two girls who testified on the stand?

A. Yes, sir.

Q. Did you, at any time, write to those girls?

A. No, sir.

46 Q. Did you do anything to induce them to come to Cincinnati?

A. No, sir.

Q. Did you do anything towards providing them with railroad fare to come to Cincinnati?

A. No, sir.

Q. Did you ever send them any money?

A. No, sir.

Q. Had you ever seen them before they came to your house?

A. No, sir.

Q. How long after they came to your house did you — them first for the first time?

A. Well, I had a sick headache that day and I got up kind of late; I guess they must have been in the house about an hour or an hour and a half before I saw them.

Q. And where did you see them first?

A. Up in the front room upstairs, in the third floor.

Q. Did they remain in your house after that time?

A. Yes, sir.

Q. Did they receive company?

A. Yes, sir.

Q. Did they begin to receive company on that first night?

A. Yes, sir.

Q. And did they receive company every night?

A. Yes, sir; every night.

Q. Which one was it was taken to the hospital sometime after arriving there?

A. That little one, Nellie.

Q. Now, how long after she arrived when she was taken to the hospital?

A. About two weeks.

Q. Do you remember when their trunks arrived?

A. Well, Stella's trunk came there about three days after she was there and Nellie's trunk came there the next day.

Q. Now, when they first came relate what occurred?

A. Well, the trunk came and I called Stella downstairs and she came down, and I said her trunk was here, and she asked me would I pay for her trunk, and I told her that there was money coming to her, she had made money and she had that money coming to her, and I paid for the trunk.

Q. Was she present when you paid for it?

A. Yes, sir.

Q. Whose money was it?

47 A. Her own money, she had made it.

Q. How much did you pay on the trunk, do you remember?

A. Fifteen dollars it was.

Q. By the way do you keep any books in your house?

A. No, sir.

Q. Have you any books at all?

A. No, sir.

Q. It has been said here that you charged up against these girls a railroad fare of five dollars and 20 cents from Charleston, and also what you paid on the trunk, did you do anything of that kind?

A. No, sir, I did not.

Q. Do you know anything about that railroad fare?

A. No, sir.

Q. Who paid it, do you know?

A. No, sir.

Q. Did you ever give it back to them after they came to Cincinnati?

A. No, sir.

Cross-examination.

By Mr. McPHERSON:

Q. Your name is Emma Harris in Cincinnati?

A. Yes, sir.

Q. And you have been known by that name in this city for about how many years?

A. About 23 years.

Q. Have you kept a house of prostitution in Cincinnati for that length of time?

A. Yes, sir.

Q. You have no other business?

A. No, sir.

Q. And your business and means of livelihood for that period of time has been of having girls at your house and paying you for that privilege?

A. Yes, sir.

Q. You say that Stella Larkins' trunk got there the day after she did?

A. Three days after she did.

Q. Which trunk got there the next day after the girl came?

A. No trunk came there the next day.

Q. Then you mean to say that one trunk came three days after the girls did and one four days?

A. Yes, sir.

Q. How many rooms do you have in your house?

A. About 16.

48 Q. How many girls did you have at your house at that time when these girls came?

A. I think it was eight.

Q. And how many girls did you have when the Green woman left your house, Bessie Green?

A. I think it was seven.

Q. There were seven—so that your house was not full when she left?

A. Yes, sir; that is all the ladies I keep; I don't keep any more.

Q. You don't keep any more?

A. No, sir.

Q. When she came back unexpectedly to you with these two additional girls you took them in. didn't you?

A. Yes, sir.

Q. Now, she left you four or five days before she returned with these girls?

A. Yes, sir.

Q. And when she left you she was angry with you?

A. Yes, sir.

Q. And went away in that frame of mind?

A. Yes, sir.

Q. Did she owe you anything when she left?

A. No, sir.

Q. Left her trunk?

A. I asked her what I must do with her clothes and she said she would send for them.

Q. In your business in case one of your girls owes you money when she leaves, she doesn't get her trunk and clothes until she pays up?

Objected to; objection sustained.

Q. What arrangements did you make with these two women about paying for their board and percentage on their earnings?

A. They asked me how much the board was and I told them three dollars a week?

Q. How much?

A. Three dollars a week.

Q. Three dollars a week?

A. And room money.

Q. By room money you mean what?

A. A dollar a room.

Q. A dollar?

A. A dollar a room.

Q. A dollar a room a man, you mean?

A. Yes, sir; for the rooming, for the room.

49 Q. That is for the use of it by one of these girls and a man—each time they were to pay you a dollar?

A. Yes, sir.

Q. And did you collect that from them after each one of these acts between a man and a woman, or all after the night is over?

A. After the night is over.

Q. And you say that you have eight girls at your place—that you had eight girls at your place at that time?

A. Yes, sir.

Q. And that you didn't keep any record of the number, or amount these girls owed you, or the amounts they paid you?

A. Yes, sir.

Q. You didn't know what was due to you from any one of them?

A. I just put it on a piece of paper, and when they make money, they have tickets and punch those tickets.

Q. What did you do with the records that you made?

A. I only keep one week's records at a time.

Q. You destroyed them at the end of the week?

A. Yes, sir.

Q. And would you then be able to determine if the girls were owing you money?

A. They never owe me anything; they just pay as they go along.

Q. And they borrow money from you and get money from you for their clothes, isn't that a common practice in your house?

A. Some times they do.

Q. Some times they do. When they do how did you keep a record of that?

A. When a peddler come in and he sells the girls, and he wants me to stand good for them and I just say "yes," and he leaves the clothes.

Q. Then how would you keep track of that and with all your women?

A. I just put it on a piece of tablet paper.

Q. Then what would you do with the tablet?

A. Count it up when the week's up.

Q. And didn't run it more than a week?

A. No, sir.

Q. Never did?

A. No, sir.

Q. Didn't you tell Mr. Watson—this gentleman sitting here—about the 20th of December, that you did have such a book?

50

A. No, sir; I never talked to Mr. Watson.

Q. At no place?

A. He ordered me out of the parlor when he came in.

Q. I will ask you if you didn't tell Mr. Watson at that house, on or about December 20th, that you had yourself paid for the trunk of Nellie Stover?

A. No, sir; I never had no conversation with Mr. Watson.

Q. He was at your house, you recognize him?

A. Yes, sir; he came in with Mr. Kuhns and he asked if Stella was in, and I came in with Stella, and he ordered me out of the parlor; Mr. Kuhns can tell you that.

Q. Did you see Mr. Watson after the hearing when he went up to get Nellie Stover's trunk?

A. Yes, sir.

Q. So you did have a conversation with him?

A. No, sir; I just saw him.

Q. You say you didn't?

A. No, sir.

Q. When he went to get Stella's trunk did you have a conversation with him?

A. No, sir.

Q. And I ask you now, if you didn't, at that time, when he went to get those trunks, tell him that you had a book and you made a record in your book?

A. No, sir; I had no conversation with Mr. Watson about any books. I simply did not.

And also BESSIE GREEN, who being first duly sworn, testified as follows:

Direct examination.

By Mr. LITTLEFORD:

Q. What is your full name?

A. Bessie Green.

Q. Bessie Green?

A. Yes, sir.

Q. Where do you live?

A. 410 George Street.

Q. You are an inmate of the Harris house there?

A. Yes, sir.

Q. Now, under what circumstances did you leave the house there, you may tell the court and jury?

A. Well, I was somewhat dissatisfied—I happened to get somewhat dissatisfied and I felt like making a change and I went away; a couple of days I was over in Covington with some friends and from there I went to Charleston.

51 Q. To Charleston?

A. Yes, sir.

Q. Did you tell Mrs. Harris that you were going to Charleston?

A. No, sir.

Q. Did Mrs. Harris give you any money when you left?

A. No, sir.

Q. Or ask you to get any girls?

A. No, sir.

Q. Did Mrs. Harris know where you were going?

A. No, sir.

Q. Now, after you arrived at Charleston what did you do?

A. I went to the hotel; I arrived there about midnight.

Q. What hotel did you go to?

A. I don't remember the name.

Q. On what street was it?

A. I don't remember the street but it was over the river; I went in an omnibus about a couple of blocks, or so; about two blocks.

Q. How long did you stay at the hotel?

A. Through the night until the next day at noon.

Q. Now, then, what did you do?

A. Then I went to a neighboring restaurant for breakfast and from there I walked up, I think they call it Capitol street.

The COURT: Won't you talk a little louder?

A. Yes, sir.

By Mr. LITTLEFORD:

Q. You got your breakfast then went up Capitol street?

A. I think that is the name; I am not sure.

Q. Then what happened?

A. Then coming on to where the court house is I met a colored woman and asked her where the sporting district is and she told me;

she said she was going to that neighborhood with a dress and I could walk along with her, and she took me to a house by the name of Mary Brown—Brown's sporting house.

Q. Who did you meet there?

A. Three or four girls; Stella Larkins, the one who was on the stand first.

Q. How long were you at Mary Brown's sporting house there?

A. From noon until about 5 o'clock in the evening.

52 Q. State whether or not you engaged board in that house?
A. I did.

Q. Did you engage board in the presence of Stella Larkins?

A. I think she was present as the landlady was out that afternoon and she came in later.

Q. Now, did you tell the girls in that house where you were from?

A. Yes, sir; they asked me and I told them I was from Cincinnati.

Q. Did you tell them from which house you were in Cincinnati?

A. I believe I did.

Q. Did you, or did you not, mention the Harris house there in Cincinnati?

A. To the best of my knowledge and belief, I believe I did.

Q. Did you tell them anything else about Cincinnati?

A. We got in a general conversation in the talk of the houses and I said Cincinnati is a very good place for money.

Q. Were there any restrictions there about the time for women to be on the street?

A. Yes, sir.

Objected to; withdrawn.

Q. State whether, or not, you were satisfied in Charleston, after you arrived there and found out the conditions?

A. I was not.

Q. When did you make up your mind to come back to Cincinnati?

A. The same day, as the women are not allowed after nine o'clock on the street.

Q. What was said by you to Stella Larkins about coming to Cincinnati?

A. Nothing that I remember; only she said she would like to come along.

Q. Did you persuade her?

A. I did not.

Q. Or did you induce her?

A. I did not in no way at all.

Q. State whether, or not, it was voluntary, or not?

A. It was voluntary; she came in the room where there was a sick girl and asked my permission to go along; and I said you may if you see fit.

Q. Now, did you visit any other house there that afternoon besides the Mary Brown house?

A. Yes, sir.

58 Q. Where?

A. Anna Parker.

Q. How far was that?

A. About half a block away on the same street.

Q. Were you up there, by the way, to get any girls, or were you looking for girls?

A. No, sir. I went there to look at the house to see whether, or not I would like the house better than the first one.

Q. Now, did you ask the girls in that place to come to Cincinnati?

A. I didn't. This girl Nellie came in there and asked me if she could come along.

Q. You mean this second girl?

A. Yes, sir; she came in while I was talking to the landlady.

Q. She came in while you were talking to the landlady?

A. Yes, sir.

Q. What did she say?

A. Asked me if she could come along.

Q. Where?

A. Back to Cincinnati.

Q. What did you say?

A. I told her she could if I got back.

Q. Did you advise her to come to Cincinnati?

A. No, sir; no way at all.

Q. Now, when was it that you started arrangements to return to Cincinnati?

A. The arrangements were not made because I did not know whether I was returning to Cincinnati that night, or the next night.

Q. Who called you up by telephone?

A. Nellie called me up.

Q. Nellie called you up and what did she say?

A. She asked me if I would return that night, and the first time I didn't give no definite answer.

Q. Now how did you go to the depot?

A. I went in a taxi.

Q. I want you to state who called that taxi up?

A. Stella Larkins ordered the cab.

Q. Did you—how did she call it up—by telephone?

A. Yes, sir.

Q. That's the girl who was on the stand?

A. Yes, sir; in the house I engaged boarding.

Q. How long did you have to wait for the train?

A. An hour or so.

Q. By the way, did you tell Mary Brown, at the house where you stayed, or did you tell Stella Larkins, the girl who stayed there that you would pay any bills for her?

A. No, sir; I never paid any bills.

Q. Did you pay any bills there?

A. No, sir.

Q. Did you have any money to pay?

A. No, sir.

Q. Had you ever met these girls before?

A. Not until I was in the house.

Q. Did you offer the landlady any money?

A. No, sir.

Q. Or did you give the landlady any money?

A. No, sir.

Q. After you arrived at the depot, what about the tickets?

A. I bought my tickets shortly before the train was due.

Q. Did you give either of these girls any money to buy tickets?

A. No, sir.

Q. Or did you pay for them?

A. No, sir.

Q. One of these girls, I don't know which, said you bought her ticket and the other one that you gave her the money, did you do either?

A. Neither one.

Q. Did you agree to pay for their tickets?

A. No, sir; neither one.

Q. Were you all together all the time?

A. Well part of the time we were separate but we mostly sat together.

Q. You had to sit there how long?

A. An hour or an hour and a half.

Q. You came to Cincinnati?

A. Yes, sir.

Q. And you went where? To Mrs. Harris'?

A. I went back to Miss Harris', yes, sir.

Q. The girls went along with you?

A. Yes, sir.

Q. Did you go in a cab?

A. No, sir.

Q. Walked up?

A. Yes, sir.

Q. Did you ask the girls to go there?

A. No, sir.

55 Q. Did you suggest to them to go there?

A. No, sir.

Q. Did they suggest going anywhere else in Cincinnati at any time?

A. No.

Q. Did they know any place in the Cincinnati?

A. Not that I know of.

Q. Now, after you got up to Miss Harris', did you meet Miss Harris there when you arrived?

A. No, sir.

Q. Did she receive you, or any of the girls?

A. She didn't receive us.

Q. Had you sent her any word that you were coming with girls?

A. No, sir.

Q. Or was she expecting you there?

A. No, sir.

Q. Now, after you came there with the two girls what did you do?

A. Went in and asked the maid for my key and went to my room.

Q. Do you know where they went?

A. They went to another room; spare room and went to bed.

Q. After that did they receive company like any other girls in the house?

A. In the evening.

Q. Do you know how long after they came their trunks arrived?

A. As near as I can remember three or four days?

Q. Had you anything to do with paying for those trunks?

A. No, sir.

Q. Now, I want to ask you this: Does Miss Harris keep any books?

A. No, sir.

Q. Did you ever see, or know, of any charges made by Miss Harris in any books against these girls for railroad tickets?

A. No, sir.

Q. Or for any money that was paid on the trunks?

A. No, sir.

Cross-examination by Mr. DARBY:

Q. When you talked with the two girls, did you tell them Emma Harris' name?

A. No, sir.

56 Q. Did you give them Emma Harris' address?

A. No, sir.

Q. So far as you knew they had never heard of Emma Harris?

A. So far as I know they did not.

Q. And so far as you know they never knew of Emma Harris and that she lived at 410 George Street, Cincinnati?

A. No, sir.

Q. When you left the place—Brown's for instance, were the trunks of the girl—who lived at the Brown house taken away at the same time?

A. No, sir; there was no trunk taken away to my knowledge.

Q. Neither, so far as you know was sent?

A. No, sir; I don't; they didn't speak of no trunk to me.

Q. Don't you know that their trunks were prepared for shipment to Cincinnati?

A. Told me they were prepared.

Q. That they were preparing to ship them?

A. No, sir; no trunk was shipped.

Q. And don't you know that they were preparing the trunks to be shipped to Cincinnati?

A. There was no shipment talked about.

Q. They didn't mention a word about trunks?

A. They didn't.

Q. When they talked of coming, they simply talked of coming without bag or baggage of any kind?

A. I think one of them had a suit case.

Q. Don't you know that while you were in Charleston, that you gave the address of Miss Emma Harris, 410 George street, Cincinnati, Ohio, and that that address was written on two tags which were fastened to the trunk of one of those girls in Charleston, and that that trunk with that card upon it, and that address, was

delivered to that house, and you saw those checks taken off those trunks?

A. No, sir; I did not see them taken off.

Q. How did the girls know the address of Miss Harris if you didn't have any conversation with them?

A. Simply because I was going back as the landlady asked me where I came from and told her where I was going.

Q. You didn't tell them but you told the landlady?

A. Yes, sir.

Q. And you didn't tell the girls?

A. No, sir.

57 Q. Did the landlady tell you that the girls owed money?

A. She didn't speak to me about the girls.

Q. And didn't she tell you that there would be charges on the trunks if the girls would come to Cincinnati?

A. No, sir.

Q. Who paid for the cab at Charleston?

A. I don't remember.

Q. Don't you know that you did yourself?

A. I don't quite remember.

Q. Well, won't you refresh your memory; don't you remember that you did pay it?

A. No, I can't remember that I did; I paid for the lunch.

Q. Do you remember whether either one of the other girls paid for the cab?

A. No, sir.

Q. Don't you know they told you they had no money that they couldn't pay for the cab; they couldn't pay for any railroad fare and they couldn't pay for getting their trunks out of that house?

A. We didn't have enough conversation long enough.

Q. You say you left Harris' because you were dissatisfied?

A. Yes, sir.

Q. How many days was that before you returned?

A. Four or five days.

Q. Don't you know which day of the week it was you returned to Harris'?

A. I believe Wednesday morning.

Q. Now, what day of the week did you leave Harris'?

A. I think it was Thursday of Friday before.

Q. Of the week previous?

A. Yes, sir.

Q. Where did you go first?

A. I went over the river to a friend of mine in Covington.

Q. How long did you remain there?

A. Until Monday night.

Q. Then where did you go when you left there?

A. I went to Charleston, West Virginia?

Q. Did you go directly from Covington to Charleston, West Virginia?

A. Yes, sir.

Q. And when did you get to Charleston, West Virginia, the same day?

58

A. The same evening.

Q. You left Cincinnati Monday, the night of Monday?

A. Yes, sir.

Q. Then you landed on to the streets in Charleston for the first time on Tuesday morning?

A. Yes, sir.

Q. About noon?

A. Yes, sir.

Q. You had never been there before?

A. No, sir.

Q. You weren't acquainted with people there?

A. No, sir.

Q. You went then to Brown's house?

A. I met a colored woman—

Q. Well, you went to Brown's house?

A. Yes, sir.

Q. And engaged board there?

A. Yes, sir.

Q. For how long a time?

A. I engaged board for to stay there.

Q. For how long a time?

A. Until I found later particulars of it for a week.

Q. Did you pay your board?

A. It is not customary to pay.

Q. Did you have your trunk or baggage of any kind with you?

A. No, sir.

Q. Didn't you pay Miss Brown, or Mrs. Brown, something?

A. No, sir.

Q. Did you eat at her table?

A. I did.

Q. And took a room?

A. I didn't sleep there.

Q. Did you have a room assigned to you?

A. No, sir; because I decided to return.

Q. You say when you came to the house you saw this girl Stella Larkins?

A. Yes, sir.

Q. How long had you been there before you got to talking to this girl to come to Cincinnati?

A. About three hours.

Q. About three hours.

A. Yes, sir.

Q. And you were at the Brown house all of that time?

A. Yes, sir.

59 Q. Then after you had talked with her you say you concluded to go to the other house; what was the house's name—of that other woman?

A. Anna Parker, I believe.

Q. When you went to the Parker house did you make any arrangements there for board?

A. I asked her what her terms were?

Q. Did she tell you what they were?

- A. They were equal.
Q. The same thing?
A. Yes, sir.
Q. Then you said that while you were at that house Nellie Stover asked you if she could come along?
A. She did.
Q. Come along where?
A. Come along to Cincinnati.
Q. How did she know you were going back to Cincinnati?
A. She heard I wasn't going to stay there.
Q. From whom did she hear that you were from Cincinnati?
A. From the landlady and myself; we were talking about it.
Q. Don't you know that the landlady didn't want these girls to leave them, and said so in their presence and your presence?
A. No sir; not in my presence.
Q. And this girl, you mean to say, asked you if she could come along; this other girl? This Stover girl?
A. Yes, sir.
Q. And you say upon the witness stand, as to the other one she could come if she wanted to?
A. Why, certainly.
Q. Then you proceeded about making the arrangements about coming, sent for a taxi-cab and came to the station?
A. No, sir; there was no arrangements made until the phone call.
Q. Then you told her you would return to Cincinnati that night?
A. Yes, sir; as they have got to register in Charleston, West Virginia, you got to register and you are not allowed on the streets after nine o'clock without police permission, and I couldn't stand for that.
Q. You wouldn't stand for that?
60 A. You have to register and I would have had to register and I wouldn't be allowed to leave until I got a permit.
Q. Well, you weren't then assigned to a room in either one of these houses of prostitution, were you?
A. No, sir.
Q. You stayed all the night before in a hotel?
A. Yes, sir.
Q. And you preferred to travel all night with these girls rather than to go back to this hotel where you had spent the night before?
A. Yes, sir.
Defendant rests.

In Rebuttal.

LEONARD E. WATSON, called in rebuttal, testified as follows:

Direct examination by Mr. DORBY:

- Q. Mr. Watson, you know the defendant Emma Harris?
A. I do.
Q. Did you see her on or about the 20th day of December, at her house?

A. Yes, sir; at different times.

Q. Did you go there on that day to get a trunk for either the Stover or the Larkins girl?

A. I went there to get the trunk of the Larkins girl and was obliged to call a policeman.

Q. Did you call to get her trunk?

A. Yes, sir.

Q. I will ask you, while you were at Emma Harris' whether, or not, she said she paid the charges on that trunk and had an account book and showed it to you?

A. She certainly did and had the book on her desk.

Thereupon both sides rested their case.

Thereupon the case was argued to the jury by respective counsel.

Thereupon the Court charged the jury as follows:

GENTLEMEN OF THE JURY: The Government of the United States of America makes certain charges against the two women, who are here in court, the defendants in this case set out in the indictment.

The indictment charges three offences as against the laws of the United States.

61 The Congress of the United States, acting under authority of what is known as the Commerce Clause of the Constitution of the United States has caused a certain law to be passed with respect as to what is known as The White Slave Traffic.

It is under that law that this charge is preferred against these defendants by the United States of America. They are not charged with keeping a house of prostitution, nor with being inmates of a house of prostitution. There is no such charge here. They are not charged with seduction as leading away an innocent, pure woman from a right and virtuous course of conduct; they are not charged with fornication or adultery, or immoral acts, or any conduct of that kind.

It is immaterial entirely, so far as the charges are concerned that one is an inmate of a house of prostitution, or that the other keeps a house of prostitution; or that two of the witnesses for the government are women who were inmates of a house of prostitution before they came.

I say these things to you so that you may confine your deliberations to the charges made in this indictment, which has to do with Interstate Commerce, and has nothing to do with the direct charge of any of those immoral and illegal acts which I have mentioned when I first commenced to give this charge to the jury.

You are to approach the case then with respect to the charges contained in this indictment and that is all; and you are to extend to these defendants the same measure of righteous judgment upon the facts that you extend to any defendant in any other case irrespective of their occupation.

You are to weigh the testimony with the utmost care, as you would in any case, and not permit your minds to be influenced in the slightest degree by their occupation, for that is not to be weighed in connection with the charge against them except so far as it has to do with the purpose which the government charges these defend-

ants had in mind when they did the illegal act complained of, if they did the illegal act complained of. On the other hand while you ought to free your minds from prejudice and bias, you are not to be influenced by any consideration of mercy, or of sympathy for the defendants in their occupying as they do professedly and without question an attitude towards the world which is unfortunate. The question is not to be decided in this case upon considerations of sympathy or of mercy; you have nothing to do with that at all;

62 you are simply to be governed by the facts in the case and that is all—as reflecting upon the charges made in this indictment and that is all.

I will read the indictment to you for I don't think it has been read in full to the jury; and the indictment means only that the United States makes the charge; that it does make up this piece of paper called the indictment. That is all. And no juror must permit any thought to come into his mind that no indictment would have been made out unless the defendants were guilty, that is not a proper but an improper attitude of mind. The indictment means nothing more than that there has been some way for the United States to present its charges as presented in the indictment.

Now what does it say?

“THE UNITED STATES OF AMERICA,

Western Division of the Southern District of Ohio, ss:

In the District Court of the United States Within and for the Western Division of the Southern District of Ohio, in the Sixth Judicial Circuit, of the Term of February, in the Year of Our Lord One Thousand Nine Hundred and Eleven. 1st Count.

Sec. 2.—Act of June 25, 1910, 36 Stat. 825. ‘White-Slave Act.’

The Grand Jurors of the United States of America, duly empaneled, sworn and charged to inquire within and for the Western Division of said District, upon their oaths and affirmations, present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to-wit, the eighth day of September, in the year one thousand nine hundred and ten, in the County of Hamilton, in the State of Ohio, in the Circuit and Western Division of the District aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly cause to be transported, and did aid and assist in obtaining transportation for and in transporting in interstate commerce, to-wit, from the City of Charleston, in the State of West Virginia, to and into the City of Cincinnati, in the County of Hamilton and State of Ohio, and within the southern Judicial district of said State of Ohio, and within the jurisdiction of this court, two certain women, to wit, Nellie Stover and Stella Larkins, for the purpose of prostitution, to-wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and Bessie Green, and each of them, that each of said Nellie Stover and Stella Larkins, would and should in said City of Cincinnati, State of Ohio, engage in the acts and practices of offering

and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

2nd Count. Sec. 2. Act of June 25, 1910, 36 Stat., 825; 'White Slave Traffic Act.'

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to-wit, the eighth day of September, in the year one thousand nine hundred and ten, in the County of Hamilton, in the State of Ohio, in the Circuit and Western Division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly procure and obtain, and cause to be procured and obtained, at the City of Charleston, in the State of West Virginia, two certain railroad passenger tickets from the Chesapeake & Ohio Railway Company, then and there a common carrier of passengers, engaged in interstate commerce, each of which said tickets was good for transportation for one person from said City of Charleston, West Virginia, to the City of Cincinnati, in the State of Ohio, upon and over the line and railroad route of the said Railway Company,—with the purpose and intention that said tickets should be used by two certain women, to-wit, Nellie Stover and Stella Larkins, in interstate commerce, to-wit, in going from said City of Charleston, in the State of West Virginia, to said City of Cincinnati, in said State of Ohio, for the purpose of prostitution, to-wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them that each of said women, to-wit, Nellie Stover and Stella Larkins, would and should, in said City of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain,—whereby, and with the means and by the use of the said tickets, said Nellie Stover and Stella Larkins were then and there and thereupon carried and transported as passengers in interstate commerce, over and upon the railway route and line of said railway company, to-wit, from said City of Charleston, in the State of West Virginia, to and into the City of Cincinnati, in the State of Ohio, and within the southern Judicial district of said State of Ohio, and within the jurisdiction of this court, for the purposes aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

64 3rd Count. And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to-wit, the eighth day of September, in the year one thousand nine hundred and ten, in the County of Hamilton, in the State of Ohio, in the Circuit and Western Division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly persuade, induce, entice, and cause to be persuaded, induced and enticed, two certain women, to-wit, Nellie Stover and

Stella Larkins, to go from one place, to-wit, the City of Charleston, in the State of West Virginia, to another place, to-wit, the City of Cincinnati, in the State of Ohio, and within the jurisdiction of this court, in interstate commerce, for the purpose of prostitution, to-wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them, that each of said women, to-wit, Nellie Stover and Stella Larkins, would and should in the said City of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain, with the consent of the said Nellie Stover and Stella Larkins; and did then and there and thereby knowingly cause and aid and assist in causing said women, to-wit, Nellie Stover and Stella Larkins, to go and be carried and transported in interstate commerce, as passengers, upon and over the railway route and line of the Chesapeake & Ohio Railway Company, a common carrier engaged in interstate commerce, to-wit, from the said City of Charleston, in the State of West Virginia, to and into the City of Cincinnati, in the State of Ohio, for the purposes aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America." And signed by the District Attorney of this District.

And the last read charge is the third count of the indictment.

There are three charges then in this indictment.

These charges, if proved, constitute offences against the laws of the United States in interstate commerce.

The defendants, each of them, have pleaded not guilty to these charges, or any of them. And thereupon they are presumed to be innocent until they are proved by the United States to be guilty, and to be guilty beyond a reasonable doubt. If the jurors have an abiding conviction, amounting to a moral certainty, that
 65 these defendants, or either of them, are, or is guilty of the offences charged, or either of them, then there is no room for reasonable doubt, and the verdict would be guilty; if, on the other hand, the jurors have not an abiding conviction amounting to a moral certainty, that the defendants, or either of them, are guilty of these offences as charged, or either of them, or any of them, then there is no room for reasonable doubt and your verdict will be not guilty.

The facts are for the determination of the jury, and the jury are to consider every fact and circumstance in the case in order to reach a proper conclusion.

In reaching the facts you will necessarily consider all of the testimony, and give every part and all of it as much weight as you think it is entitled to. That every witness is presumed to tell the truth—all persons are presumed to tell the truth. And it is for the jury to say, in any particular case, with respect to any witness whether, or not, the truth has been told or not.

It is within your province to believe all that a witness has said, or to believe part of it; to receive all that a witness has said, or to

receive part of it; to reject all a witness has said, or reject part of it, according as you shall think the witness is entitled to belief or not; if entitled to belief with respect to part of it and not entitled to belief with respect to other parts as you may determine.

And in weighing all testimony, while it is true that all persons are presumed to tell the truth, nevertheless we all know, from common experience, that all men and all women, do not, at all times, tell the truth, that sometimes men and women are prejudiced, influenced or biased, or by motives of some kind; it will be the duty of the jury to look into any motive any witness may have which may possibly operate upon the mind of a witness in such a way as to cause the witness to deviate from the exact truth, if there are any motives of that kind to be observed by the jury in this particular case.

Now, you will have observed in this indictment that the two defendants are charged with having committed three offences against the laws of the United States, and you will have to consider each one of these charges separately against each.

In order to convict the defendants, or either of them, the United States must prove at least one of these charges against them, or either of them.

The defendants are charged jointly, you will have observed; but, you may, as you may determine the facts to be, find one of them guilty, and the other not guilty, or, according as you may determine the facts to be may find both of them guilty; or if
 66 you put it conversely, you may acquit one and find the other one guilty, or acquit them both, as you shall determine the facts to be.

Each of them is charged with three separate offences, so you will have to determine from all of the testimony whether each of them is guilty of all the offences charged, or if not all, which of the offences charged, and incorporate in your verdict, not guilty of such a charge of the indictment as you will find the defendants not guilty of.

You will retire to your jury room and select a foreman.

Counsel for defendants reserved a general exception to the court's charge.

Thereupon the jury retired and upon due deliberation returned a verdict as appears of record herein.

The above and foregoing was all the evidence offered by either or both of the parties hereto at said hearing.

Thereupon within three days, defendants, through their counsel, filed their motion for a new trial, which motion, upon consideration, the court overruled, to all of which defendants by counsel, then and there excepted.

And now come defendants and present this, their Bill of Exceptions, and pray that the same may be allowed, signed, sealed and made a part of the record herein, all of which is accordingly done this 21st day of March, 1911.

HOWARD C. HOLLISTER,
*Judge of the United States District Court,
 Southern District of Ohio, Western Division.*

"EXHIBIT A." (EXPRESS TAG.)

Form 150.

Include in Address County and State,
and in Cities, Street and Number.

From Charleston, W. Va.

For Miss Emma Harris,
410 George St.,
Cin., O.Adams
Express
Company.

C. O. D. 15.65.

Ex. A.

On the back of the foregoing tag, is the following:

From Mary Brown,
718 Young St.,
Chas, W. Va.

"EXHIBIT B." (EXPRESS TAG.)

Form 150.

Include in Address County and State,
and in Cities, Street and Number.

From Charleston, W. Va.

Adams
Express
Company.

67

For Miss Emma Harris,
410 George St.,
Cincinnati,
Ohio.

C. O. D. \$15.65.

Ex. B.

On the back of the foregoing tag is the following:

From Mary Brown,
718 Young St.,
Charleston, W. Va.*Petition for a Writ of Error.*

And afterwards, to-wit: on the 22nd day of March, A. D. 1911, came the Defendants by their Attorney and filed in the Clerk's Office of the Court aforesaid, a certain Petition for Writ of Error in this cause, clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 798.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN,
Defendants.

Petition for a Writ of Error.

And now come Emma Harris, alias Emma R. Smith, and Bessie Green, defendants herein, and say that on or about the — day of February, 1911, this Court entered judgment of conviction herein against said defendants, in which judgment and the proceedings had prior thereunto in this cause, certain errors were committed, to the prejudice of these defendants, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

Wherefore, these defendants pray that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Sixth Judicial Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

MAX LEVY,

Attorney for Defendants.

Assignments of Errors.

And afterwards, to-wit: on the same day, the following Assignments of Errors was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

68 United States District Court, Southern District of Ohio,
Western Division.

No. 798.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN,
Defendants.

Assignment of Errors.

Now come Emma Harris, alias Emma R. Smith, and Bessie Green, defendants herein, by Max Levy, their attorney, and say that in the records and proceedings aforesaid there is manifest error, in this, to-wit:

First.

The Court erred in overruling the motion to quash the indictment, as appears of record herein, and to which counsel for defendants then and there excepted.

Second.

The Court erred in overruling the demurrer, filed by the defendants herein, to which ruling counsel for defendants then and there excepted, as appears of record herein.

Third.

The Court erred in overruling the motion of the defendants for a separate trial, to which ruling counsel for defendants then and there excepted, as appears on page 2 of the bill of exceptions.

Fourth.

The Court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 10 of the bill of exceptions:

"What did she say?" (Referring to the defendant, Emma Harris), and in overruling the defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Fifth.

The Court erred in refusing the motion of the defendants to strike out the following answer:

"She said it was a good place to make money."

Which answer was made in response to question "What did she say?" as appears on page 10 of the bill of exceptions, and to which ruling counsel for defendants then and there excepted.

Sixth.

The Court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 11 of the bill of exceptions:

69 "What else was said in that conversation," and in overruling the defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Seventh.

The Court erred in permitting the witness, Stella Larkins, to answer the following question, as appears at the bottom of page 12, and the top of page 13 of the bill of exceptions:

"Now, what conversation, if any, did you have with Emma Harris about your trunk, and about the car fare that Bessie Green bought your ticket with to bring you from Charleston," and in overruling defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Eighth.

The Court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 13 of the bill of exceptions:

"Did she ever put it down on the book afterwards?" and in overruling defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Ninth.

The Court erred in overruling the motion made by defendants to strike out the following answer—"yes sir"—in response to the following question—"Did she ever put it down on the book afterwards" as appears on page 13 of the bill of exceptions, and to which ruling of the Court, counsel for defendants then and there excepted.

Tenth.

The Court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 13 of the bill of exceptions:

"What did you see in that book"? and in overruling defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Eleventh.

The Court erred in permitting the witness, Stella Larkins, to answer the following question, as appears at the bottom of page 13 of the bill of exceptions:

"Which railroad fare do you mean?" and in overruling defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Twelfth.

70 The Court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 14 of the bill of exceptions: "How much?"—and to which ruling of the Counsel, counsel for defendants then and there excepted.

Thirteenth.

The Court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 14 of the bill of exceptions:

"And how much of a debt was against you?" and to which ruling of the Court, counsel for defendants then and there excepted.

Fourteenth.

The Court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 14 of the bill of exceptions:

"\$30.00, the expressage and \$5.05 railroad fare?" and to which ruling of the Court, counsel for defendants then and there excepted.

Fifteenth.

The Court erred in permitting the cards, marked "Exhibit A and Exhibit B" to be read in evidence, as appears on page 16 of the bill of exceptions, and in overruling defendants' objection thereto, to which ruling of the Court counsel for defendants then and there excepted.

Sixteenth.

The Court erred in permitting the witness, Nellie Stover, to answer the following question, as appears on page 37 of the bill of exceptions:

"Give the substance of it, can you?" and in overruling the objection of the defendants, to which ruling counsel for defendants then and there excepted.

Seventeenth.

The Court erred in permitting the witness, Nellie Stover, to answer the following question, as appears on page 38 of the bill of exceptions:

"And how much was the express, do you remember?" and in overruling the objection of the defendants, to which ruling counsel for defendants then and there excepted.

Eighteenth.

The Court erred in permitting the witness, Nellie Stover, to answer the following question, as appears at the bottom of page 38 of the bill of exceptions:

"What, if any, conversation, did you have with Miss Harris about the payment of these charges and expressage?" and in overruling defendants' objection thereto, to which ruling counsel for defendants then and there excepted.

71

Nineteenth.

The Court erred in overruling the motion of the defendants to strike out the following answer of the witness, Nellie Stover, as appears on page 39 of the bill of exceptions:

"Mrs. Harris always kept books with us and she put down everything; every thing was put down, about paying my trunk, the bill, and she put down about my fare, and I was to pay her," and to which ruling counsel for defendants then and there excepted.

Twentieth.

The verdict and judgment rendered herein is contrary to law.

Twenty-first.

The verdict and judgment rendered herein is contrary to law and not sustained by the evidence.

Twenty-second.

The verdict does not establish the guilt of Emma Harris, alias Emma R. Smith, beyond a reasonable doubt.

Twenty-third.

The verdict does not establish the guilt of Bessie Green beyond a reasonable doubt.

Twenty-fourth.

The Court erred in overruling the motion in arrest of judgment and supplemental motion in arrest of judgment, to which defendants excepted, as appears of record herein.

Twenty-fifth.

For other reasons apparent upon the face of the record.

Wherefore, defendants pray that said judgment of the District Court may be reversed.

MAX LEVY,
Attorney for Defendants.

Entry, 10—340.

And afterwards, to-wit: on the same day, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

No. 798.

UNITED STATES OF AMERICA, Plaintiff,

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN,
Defendants.

Entry Allowing Writ of Error.

This 22nd day of March, 1911, came Emma Harris, alias Emma R. Smith, and Bessie Green, defendants herein, by their attorney, and filed herein and presented to the Court their petition, praying for the allowance of a writ of error, an assignment of errors intended to be urged by them, praying also that a transcript of the record and the proceedings and papers, upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Sixth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the defendants giving bond, according to law, in the sum of Three Thousand (\$3,000.00) Dollars, which shall operate as a supersedeas bond.

Præcipe.

And afterwards, to-wit: on the same day, the following Præcipe for Transcript was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio.

No. 798.

THE UNITED STATES OF AMERICA

VS.

EMMA HARRIS et al.

T. B. E. Dilley, Clerk of said Court:

Please prepare a certified copy of the record and proceedings in the above entitled cause to be filed in the Circuit Court of Appeals on proceedings in Error.

MAX LEVY,
Attorney for Defendants.

Bond on Writ of Error.

And afterwards, to-wit on the 27th day of March, A. D. 1911, came the defendant, Emma Harris, alias Emma R. Smith, and filed in the Clerk's Office of the Court aforesaid, a certain Bond in this cause, which said Bond is clothed in the words and figures following, to-wit:

District Court of the United States, Southern District of Ohio, Western Division, as:

No. 798.

THE UNITED STATES OF AMERICA

VS.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN.

Know All Men by These Presents:

That we, Emma Harris, alias Emma R. Smith, as principal, and Charles Albert and Moses Hirschman as sureties, are held and firmly bound unto the United States of America in the sum of Three 73 Thousand (\$3,000.00) Dollars, to be paid to the said The United States of America to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 25th day of March, 1911. Whereas, the above named Emma Harris, alias Emma R. Smith,

has taken out a Writ of Error to the Circuit Court of Appeals of the United States for the Sixth Circuit to reverse the judgment rendered in the above entitled action by the District Court of the United States for the Southern District of Ohio.

Now therefore, the condition of this obligation is such, that if the above named Emma Harris, alias Emma R. Smith, shall prosecute her said Writ of Error to effect and shall abide the judgment of the said Circuit Court of Appeals of the United States then this obligation to be void; otherwise to remain in full force and virtue.

EMMA R. SMITH.

EMMA HARRIS.

[SEAL.]

CHAS. ALBERT.

MOSES HIRSCHMAN.

Sealed and delivered in presence of

MAX LEVY.

HARRY F. RABE.

The above security is approved.

HOWARD C. HOLLISTER,

District Judge of the United States, S. D. O.

THE UNITED STATES OF AMERICA,

Southern District of Ohio, ss:

I, Charles Albert, one of the sureties above named, do solemnly swear that after paying by just debts and liabilities, I am worth Fifteen Thousand (\$15,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

CHAS. ALBERT.

Sworn to before me the 25th day of March, 1911.

[SEAL.]

HARRY F. RABE,

Deputy Clerk U. S. District Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, ss:

I, Moses Hirschman, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Fifteen Thousand (\$15,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

MOSES HIRSCHMAN.

Sworn to before me the 27th day of March, 1911.

[SEAL.]

HARRY F. RABE,

Deputy Clerk U. S. District Court, S. D. O.

And afterwards, to-wit: on the same day, came the defendant, Bessie Green, by her Attorney and filed in the Clerk's Office of said Court, a certain Bond, clothed in the words and figures following, to-wit:

District Court of the United States, Southern District of Ohio, Western Division, ss:

No. 798.

THE UNITED STATES OF AMERICA

VS.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN.

Know All Men by These Presents:

That we, Bessie Green, as principal, and Charles Albert and Moses Hirschman as sureties are held and firmly bound unto the United States of America in the sum of Three Thousand (\$3,000.00) Dollars, to be paid to the said The United States of America. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our Seals. Dated this 25th day of March, 1911. Whereas, the above named Bessie Green has taken out a Writ of Error to the Circuit Court of Appeals of the United States for the Sixth Circuit to reverse the judgment rendered in the above entitled action by the District Court of the United States for the Southern District of Ohio. Now, therefore, the condition of this obligation is such, that if the above named Bessie Green shall prosecute her said Writ of Error to effect and shall abide the judgment of the said Circuit Court of Appeals of the United States then this obligation to be void; otherwise to remain in full force and virtue.

BESSIE GREEN.

[SEAL.]

CHAS. ALBERT.

MOSES HIRSCHMAN.

Sealed and delivered in presence of—

MAX LEVY.

HARRY F. RABE.

The above surety is approved.

HOWARD C. HOLLISTER,

District Judge of the United States, S. D. O.

UNITED STATES OF AMERICA,

Southern District of Ohio, ss:

I, Charles Albert, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Fifteen Thousand (\$15,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

CHAS. ALBERT.

75

Sworn to before me the 25th day of March, 1911.

HARRY F. RABE,

Deputy Clerk U. S. District Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, ss:

I, Moses Hirschman, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth

Fifteen Thousand (\$15,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

MOSES HIRSCHMAN.

Sworn to before me the 27th day of March, 1911.

[SEAL.]

HARRY F. RABE,

Deputy Clerk U. S. District Court, S. D. O.

United States District Court, Southern District of Ohio, Western Division.

No. 798.

THE UNITED STATES OF AMERICA

vs.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN.

UNITED STATES OF AMERICA,

Southern District of Ohio, ss:

I, B. E. Dilley, Clerk of the Court aforesaid, do hereby certify that the foregoing is a true, correct and complete transcript of the record and proceedings had by and before said Court in the above entitled cause, as the same appear of record and on file in the Clerk's Office of said Court.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 20th day of April, A. D. 1911.

B. E. DILLEY, Clerk,

By HARRY F. RABE, Deputy.

[SEAL.]

Writ of Error.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA,

Sixth Judicial Circuit, ss:

The President of the United States to the Honorable the Judge of the District Court of the United States for the Southern District of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between The United States of America and Emma Harris, alias Emma R. Smith, and Bessie Green, a manifest error hath happened, to the great damage of the said Emma Harris, alias Emma R. Smith, and Bessie Green as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Sixth Circuit, together with this writ, so that you have the same at Cincinnati, in said Circuit, on the* 26th day of April next, in the

said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the 27th day of March, in the year of our Lord one thousand nine hundred eleven, and of the Independence of the United States of America the one hundred and thirty-fifth.

[SEAL.]

B. E. DILLEY,

*Clerk of the District Court of the United States
for the Southern District of Ohio.*

Allowed by

HOWARD C. HOLLISTER,

*Judge of the District Court of the United States
for the Southern District of Ohio.*

*Not exceeding 30 days from the day of signing the citation.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said Circuit, on the 26th day of April next, pursuant to a Writ of Error, filed in the Clerk's Office of the District Court of the United States for the Southern District of Ohio, wherein Emma Harris, alias Emma R. Smith, and Bessie Green are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the Judgment rendered against
77 said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 27th day of March, in the year of our Lord one thousand nine hundred and eleven, and of the independence of the United States of America the one hundred and thirty-fifth.

HOWARD C. HOLLISTER,

*Judge of the District Court of the United States
for the Southern District of Ohio.*

*Not exceeding 30 days from the day of signing.

Service of the within citation is hereby acknowledged, and appearance entered on behalf of the United States of America in said proceedings in the U. S. Circuit Court of Appeals for the Sixth Circuit, this 28th day of March, 1911.

SHERMAN T. McPHERSON,
*United States Attorney in and for the
Southern District of Ohio.*

And afterwards towit on May 2 1911, præcipe for appearance of counsel was filed in said causes which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2177.

EMMA HARRIS et al.

vs.

THE U. S. OF AMERICA.

Frank O. Loveland, Clerk of said Court:

Please enter my appearance as counsel for the plaintiff- in error.

MAX LEVY.

And afterwards towit on February 13 1912, an entry was made upon the Journal of said Court in said cause clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2177.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN

vs.

UNITED STATES OF AMERICA.

and

#2178.

DELLA BENNETT

vs.

UNITED STATES OF AMERICA.

Before Warrington, Knappen, and Denison, C. JJ.

These causes are argued together by Mr. Max Levy for the plaintiffs in error and are continued until tomorrow for further argument.

And afterwards towit on February 14 1912, an entry was made upon the Journal of said Court in said causes which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2177.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN
vs.
UNITED STATES OF AMERICA.

and

#2178.

DELLA BENNETT
vs.
UNITED STATES OF AMERICA.

These causes are further argued by Mr. Max Levy for the plaintiffs in error, and by Mr. Thomas L. Darby, Assistant United States Attorney, for the Defendant in error and are submitted to the Court.

And afterwards towit on March 5 1912, judgment was entered in these causes clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2177.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN
vs.
UNITED STATES OF AMERICA.

Error to the District Court of the United States for the Southern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Ohio and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause be and the same is hereby affirmed.

And on the same day, towit March 5 1912, an opinion was filed in said cause which reads and is as follows:

Opinion.

Filed Mar. 5, 1912. Frank O. Loveland, Clerk.

United States Circuit Court of Appeals, Sixth Circuit.

No. 2177.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN, Plaintiffs
in Error,

vs.

UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Southern
District of Ohio.

Submitted February 14, 1912; Decided March 5, 1912.

Before Warrington, Knappen, and Denison, Circuit Judges.

DENISON, *Circuit Judge*:

This case presents no question not disposed of by our opinion in the accompanying case of *Bennett vs. United States*, save this: Was respondent Harris entitled to an instructed acquittal because of the failure of sufficient evidence to support a verdict of guilty?

In this case, two women came from Charleston, West Virginia, and entered and remained for a time in the house of prostitution kept by Harris, in Cincinnati. There is no direct evidence that she had anything to do with inducing or aiding them to come; and support for this conclusion is to be found only in the circumstances. The evidence tended to show that respondent Green, an inmate of the same house, went from Cincinnati to Covington, and then, after a couple of days, to Charleston, arriving there in the morning; that on the same afternoon, she started back for Cincinnati; that she furnished money to pay transportation for the two Charleston women who came with her; that they all went together to the Harris house the next morning; that a day or two later, the trunks of the Charleston women followed them to the Harris house with C. O. D. charges, including bills due from them to the keeper of the Charleston house of the same kind where they had been living: that Harris paid these C. O. D. charges and charged the same on her book against the Charleston women; and that such book, when later exhibited to them, also contained the charge for their railroad tickets from Charleston. Inasmuch as there was nothing unlawful, under this statute, in receiving these women or advancing the charges on their baggage, conviction must rest upon the theory that respondent Green went to Charleston and advanced the railroad fare while acting as the agent for the respondent Harris. This is explicitly denied by respondent Green, as a witness. The circumstances that she went away and soon returned with the other women is consistent with this

theory of guilt, but it is not seriously inconsistent with the theory that Green acted for herself only; and respondent's counsel therefore say that absolutely essential support for the verdict must be found, if at all, in the proof indicating that she charged this railroad fare against the Charleston women in her account with them; and further say that such evidence of this fact as appears in this case—the testimony of a witness with a grievance who claims to have seen the entry in a book not otherwise shown to exist—is evidence so easily fabricated and so far relates to a fact which might be consistent with innocence, that a verdict based thereon should not be allowed to stand. This argument by respondents' counsel rests on a confusion between the fact and the evidence of that fact. The agency is the essential fact; the existence of the book entry is one item of evidence; and we do not feel at liberty to set aside the verdict in this case for this reason. We think the question whether, under all the evidence, Green was acting for Harris, was a question for the jury. The weakness of the proof of the book entry was to be considered in connection with all the circumstances, including Harris' occupation, the likelihood that she might desire and send for more inmates, the reasonableness of the story told by Green, and all the other surrounding facts. The keeper of such a resort who receives inmates, knowing that they have just come from another state and knowing the purpose for which they came, and who then advances them money incident to their journey, and who finds that a jury has concluded that she instigated the journey, cannot say that the verdict is without support because the jury's conclusion is drawn from circumstances which, in another environment, might not have led to the same inference. The probative force of such environment, as supporting or as contradicting the words of a witness, pertains to an issue of fact and not to one of law.

It follows that the conviction and sentence will be affirmed.

And afterwards towit on March 18, 1912, a petition for writ of error was filed in said cause clothed in the words and figures as follows:

Supreme Court of the United States.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN, Plaintiffs
in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Petition for Writ of Error.

Your petitioners, Emma Harris, alias Emma R. Smith, and Bessie Green, plaintiffs in error in the above entitled cause, respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Sixth Circuit, No. 2177, and that a judgment has therein been rendered on the 5th day of March, 1912, affirming a judgment of the District Court of the United States for the Southern District of Ohio, Western Division.

That the jurisdiction of none of the courts above mentioned is or was depending in anywise upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of the different states; that the constitutionality of a Federal Statute is involved in this cause, and that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error; and therefore your petitioners would respectfully pray that a writ of error be allowed them in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit to send the record and proceedings in said cause with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by said plaintiffs in error may be reviewed, and if error be found, corrected according to the laws and customs of the United States, and for a stay of proceedings and stay of execution.

EMMA HARRIS, ALIAS EMMA R. SMITH, AND
BESSIS GREEN, *Plaintiffs in Error*,
By MAX LEVY, *Their Attorney*.

The foregoing petition is granted, and a writ of error allowed, as prayed for.

M'ch 12, 1912.

HORACE H. LURTON,
Justice Supreme Court of United States.

And on the same day, towit March 18, 1912, an assignment of errors was filed in said cause which is in the words and figures as follows:

Supreme Court of the United States.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN, Plaintiffs
in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Assignment of Errors.

And now comes the plaintiffs in error, Emma Harris, alias Emma R. Smith, and Bessie Green, and say that in the record and proceedings aforesaid in the United States Circuit Court of Appeals for the Sixth Circuit, No. 2177, in the above entitled cause, and in the rendition of the judgment therein, manifest error has intervened to the prejudice of said plaintiffs in error, in this, towit:

First. Said Circuit Court of Appeals erred in entering judgment affirming the judgment of the District Court of the United States for the Southern District of Ohio, Western Division, in favor of said defendant in error, and against said plaintiffs in error.

Second. Said Circuit Court of Appeals erred in not reversing the said judgment of the United States District Court aforesaid, and in not remanding said cause to said District Court for a new trial.

Third. Said Circuit Court of Appeals erred in not sustaining the third assignment of error upon the record in said cause.

Fourth. Said Circuit Court of Appeals erred in not sustaining the twenty-first assignment of error upon the record in said cause.

Fifth. Said Circuit Court of Appeals erred in not sustaining the twenty-second assignment of error upon the record in said cause.

Sixth. Said Circuit Court of Appeals erred in not sustaining the twenty-third assignment of error upon the record in said cause.

Seventh. Said Circuit Court of Appeals erred in not sustaining the twenty-fourth assignment of error upon the record in said cause.

Eighth. Said Circuit Court of Appeals erred in rendering judgment against the plaintiffs in error, and in favor of said defendant in error.

Wherefore, the said Emma Harris, alias Emma R. Smith, and Bessie Green, plaintiffs in error, pray that for the errors aforesaid, and other errors appearing in the record of said United States Circuit Court of Appeals, in the above entitled cause, to the prejudice of the plaintiffs in error, the said judgment of the said United States Circuit Court of Appeals be reversed, annulled, and for naught esteemed, and that said cause be remanded to the United States District Court for the Southern District with instructions to grant a new trial in said cause, or for such further proceedings in said cause as may be determined upon by this Honorable Court, to the end that justice may be done in the premises.

MAX LEVY,

Attorney for Plaintiffs in Error.

And on the same day, towit on March 18, 1912, a bond was filed in said cause clothed in the words and figures as follows:

Know all men by these presents, That we, Emma Harris, alias Emma R. Smith & Bessie Green, as principals, and Maryland Casualty Company, as sureties, are held and firmly bound unto The United States of America in the full and just sum of Three Hundred dollars, to be paid to the said The United States of America, its certain attorney, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of March, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a session of the United States Circuit Court of Appeals, 6th Circuit, in a suit depending in said Court, between Emma Harris, alias Emma R. Smith and Bessie Green, plaintiffs in error, and The United States of America, Defendant in error, a judgment was rendered against the said Emma Harris, alias Emma R. Smith and Bessie Green, and the said Emma Harris, alias Emma R. Smith and Bessie Green having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit and a citation directed to the said The United States of America, citing and admonishing it to be and appear at a Supreme Court of the United States at Washington, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Emma Harris, alias Emma R. Smith and Bessie Green shall prosecute their writ to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

EMMA HARRIS.
 EMMA R. SMITH. [SEAL.]
 BESSIE GREEN. [SEAL.]
 MARYLAND CASUALTY CO.,
 By W. H. SARGENT,
Att'y-in-Fact. [SEAL.]

Sealed and delivered in the presence of

MAX LEVY.
 AGNES B. GRANT.

Approved by

HORACE H. LURTON,
*Associate Justice of the Supreme Court
 of the United States.*

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, B. E. Dille, Clerk of the District Court of the United States within and for the District and Division aforesaid, do hereby certify that, in my opinion, the within bond of Emma Smith and Bessie Green, with the Maryland Casualty Company, as surety, is sufficient.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 13th day of March, A. D. 1912.

[SEAL.]

B. E. DILLEY, *Clerk,*
 By HARRY F. RABE, *Deputy.*

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit,
 Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals, before you, or some of you, between Emma Harris, alias Emma R. Smith, and Bessie Green, plaintiffs in error, and The United States of America, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ,

so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 12th day of March, in the year of our Lord one thousand nine hundred and twelve.

[Seal of the Supreme Court of the United States.];

JAMES H. MCKENNEY,

Clerk of the Supreme Court of the United States.

Allowed to operate as a supersedeas and the plaintiffs in error may be admitted to bail, upon filing the citation duly served, by the District Court, upon the execution of a bond in said Court conditioned as required by law in the sum of the bond under which they are now on bail.

HORACE H. LURTON,

*Associate Justice of the Supreme Court
of the United States.*

[Endorsed:] Filed Mar. 18, 1912. Frank O. Loveland, Clerk.

United States Circuit Court of Appeals for the Sixth Circuit, ss:

In pursuance of the command of the within writ of error, I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby transmit under the seal of said Court, a true, full and complete copy of the record and proceedings in said Court in the cause and matter in said writ of error stated; together with all things concerning the same, to the Supreme Court of the United States, together with said writ of error and the citation to said defendant in error.

Witness my official signature and the seal of said Court at Cincinnati, Ohio, in said Circuit, this 19th day of March, 1912.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,

*Clerk United States Circuit Court of Appeals
for the Sixth Circuit.*

UNITED STATES OF AMERICA, ss:

To The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the United States Circuit Court of Appeals for the Sixth Circuit, wherein Emma Harris, alias Emma R. Smith, and Beede

Green are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Horace H. Lurton, Associate Justice of the Supreme Court of the United States, this 12th day of March, in the year of our Lord one thousand nine hundred and twelve.

HORACE H. LURTON,

Associate Justice of the Supreme Court of the United States.

MARCH 18", 1912.

I hereby acknowledge service of a true copy of the within Citation.

SHERMAN T. McPHERSON,
United States Attorney, S. D. O.

United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of Emma Harris, alias Emma R. Smith and Bessie Green vs. The United States of America No. 2177, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof, together with the original writ of error and citation.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 19th day of March A. D. 1912.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
*Clerk of the United States Circuit Court of
Appeals for the Sixth Circuit.*

80 EMMA HARRIS, ETC., ET AL. VS. THE UNITED STATES OF AMERICA.

94 Supreme Court of the United States, October Term, 1911.

No. 1067.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN, Plaintiffs
in Error,

VS.

THE UNITED STATES OF AMERICA.

On Petition for Writ of Certiorari to the United States Circuit Court
of Appeals for the Sixth Circuit.

On consideration of the petition for a writ of certiorari herein to
the United States Circuit Court of Appeals for the Sixth Circuit, and
of the argument of counsel thereupon had, as well in support of as
against the same, it is now here ordered by the Court that the said
petition be, and the same is hereby, granted, and that the transcript
of record heretofore filed be taken as a return to the writ.

May 13, 1912.

Endorsed on cover: File No. 23,143. U. S. Circuit Court Appeals,
6th Circuit. Term No. 602. Emma Harris, alias Emma R. Smith,
and Bessie Green, plaintiffs in error, vs. The United States of Amer-
ica. Filed April 1st, 1912. File No. 23,143.

(23,144)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 603.

DELLA BENNETT, PLAINTIFF IN ERROR AND PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO AND ON WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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No. 2178.

DELLA BENNETT, Plaintiff in Error,
vs.
UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Southern
District of Ohio.

Record.

Original Transcript Filed April 21, 1911.

1 *Transcript of Record.*

No. 797.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

In the District Court of the United States within and for the District
and Division Aforesaid.

Present, the Honorable Howard C. Hollister, District Judge.

Among the proceedings had were the following, to-wit:

Criminal. No. 797.

THE UNITED STATES OF AMERICA
vs.
DELLA BENNETT.

Indictment.

Be it remembered that on the 9th day of February in the year
of our Lord one thousand nine hundred and Eleven, came the
Grand Jurors of the United States of America, duly empaneled
within and for the District and Division aforesaid, and presented
their certain Bill of Indictment, which said Bill of Indictment is
clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, ss:

In the District Court of the United States within and for the Western Division of the Southern District of Ohio, in the Sixth Judicial Circuit, of the term of February, in the year of our Lord one thousand nine hundred and eleven.

1st Count. Sec. 2—Act of June 25, 1910, 36 Stat., 825, "White-Slave Traffic Act."

The Grand Jurors of the United States of America, duly empaneled, sworn and charged to inquire within and for the Western Division of said district, upon their oaths and affirmations, present — Della Bennett, on or about, to-wit, the twenty-ninth day of September, in the year one thousand nine hundred and ten, in the County of Hamilton, in the State of Ohio, in the Western Division of the Southern District of Ohio, and within the jurisdiction of this Court, did then and there unlawfully and knowingly cause to be transported, and did aid and assist in obtaining transportation for and in transporting in interstate commerce, to-wit, from the City of Chicago, in the State of Illinois, to and into the City of Cincinnati, in the

County of Hamilton and State of Ohio, and within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, two certain women, to-wit, Opal Clark and Eva Parks, for the purpose of prostitution, to-wit, for and with the purpose and intention on the part of said Della Bennett that said Opal Clark and Eva Parks, and each of them, would and should in said City of Cincinnati, State of Ohio; engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

2nd Count. Sec 2, Act of June 25, 1910, 36 Stat., 825; "White-Slave Traffic Act."

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Della Bennett, on or about, to-wit, the twenty-ninth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the Western Division of the Southern District of Ohio, and within the jurisdiction of this court, did then and there unlawfully and knowingly procure and obtain, and cause to be procured and obtained, at the City of Chicago, in the State of Illinois, two certain railroad passenger tickets from the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, then and there a common carrier of passengers, engaged in interstate commerce; each of which said tickets was then and there good for transportation for one person from said City of Chicago, in the State of Illinois, to the City of Cincinnati, in the State of Ohio, upon and over the line and railroad route of said Railway Company,—with the purpose and intention that said tickets should be used by two certain women, to-wit, Opal

Clark and Eva Parks, in interstate commerce, to-wit, in going from said City of Chicago, in the State of Illinois, to said City of Cincinnati, in said State of Ohio, for the purpose of prostitution, to-wit, for and with the purpose and intention on the part of said Della Bennett that each of said women, to-wit, Opal Clark and Eva Parks, would and should, in said City of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain,—whereby and with the means and by the use of said tickets, said Opal Clark and said Eva Parks were then and there and thereupon carried and transported as passengers in interstate commerce, over and upon the railway route and line of said railway Company, to-wit, from said City of Chicago, in the State of

3 Illinois, to and into said City of Cincinnati, in the State of Ohio, and within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, for the purposes aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

3rd Count. Sec. 3, Act of June 25, 1910, 36 Stat. 825; "White-Slave Traffic Act."

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Della Bennett, on or about, to-wit, the twenty-ninth day of September, in the year one thousand nine hundred and ten, in the County of Hamilton, in the State of Ohio, in the Western Division of the Southern District of Ohio, and within the jurisdiction of this court, did then and there unlawfully and knowingly persuade, induce, entice, and cause to be persuaded, induced and enticed, two certain women, to-wit, Opal Clark and Eva Parks, to go from one place, to-wit the City of Chicago, in the State of Illinois, to another place, to-wit, the City of Cincinnati, in the State of Ohio, within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, in interstate commerce, for the purpose of prostitution, to-wit, for and with the purpose and intention on the part of said Della Bennett, that each of said women, to-wit, Opal Clark and Eva Parks, would and should in the said City of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain, with the consent of said Opal Clark and Eva Parks; and did then and there and thereby knowingly cause and aid and assist in causing said women, to-wit, Opal Clark and Eva Parks, to go and be carried and transported in interstate commerce, as passengers, upon and over the railway route and line of The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a common carrier engaged in interstate commerce, to-wit, from the said City of Chicago, in the State of Illinois, to and into the said City of Cincinnati, in the State of Ohio, for the purposes aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SHERMAN T. McPHERSON,
United States Attorney, S. D. O.

The following endoresement appears on the back of said Indictment:

A true bill.

WM. H. DAVIS, *Foreman.*

Entry, 10—310.

And afterwards, to-wit: on the same day, an Entry was made upon the Journal of said Court in said cause, which said Entry is clothed in the words and figures following, to-wit:

No. 797.

THE UNITED STATES OF AMERICA

VS.

DELLA BENNETT.

This day came the District Attorney on behalf of the United States, and the said defendant, Della Bennett, being present in Court in pursuance of the tenor of her recognizance as given before the United States Commissioner for her appearance on this day; upon motion of the District Attorney, it is ordered that the said defendant, Della Bennett, enter into a recognizance before this Court in the sum of Three Thousand Dollars (\$3,000.00) for her appearance before this Court from day to day as may be required.

Recognizance.

And afterwards, to-wit: on the same day, the following Recognizance was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,

Southern District of Ohio, ss:

Be it remembered, that on this 9th day of February, A. D. 1911, before me B. E. Dilley, Clerk of the United States District Court, within and for the district aforesaid, duly appointed as such by the said Court personally came Della Bennett as principal and John T. Patterson and Fisher Bachrach as sureties and jointly and severally acknowledged themselves to owe the United States of America in the sum of Three Thousand (\$3,000.00) Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to-wit:

The condition of this recognizance is such, that if the said Della Bennett shall personally appear before the District Court of the United States, in and for the District aforesaid, at Cincinnati, Ohio, from day to day as may be required and then and there to answer unto an indictment pending therein for violation of Secs. 2-3 Act of June 25, 1910, 36 Stat. 825, and then and there abide the further

order of said Court, and not depart without leave thereof then this recognizance to be void; otherwise to remain in full force and virtue.

DELLA BENNETT. [SEAL.]

J. T. PATTERSON.

FISHER BACHRACH.

5 Taken and acknowledged before me on the day and year first above written.

[SEAL.]

B. E. DILLEY,

Clerk U. S. District Court, Southern District of Ohio.

UNITED STATES OF AMERICA,

Southern District of Ohio, ss:

I, John T. Patterson one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Six Thousand (\$6,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

J. T. PATTERSON.

Sworn to before me the 9th day of February, 1911.

[SEAL.]

HARRY F. RABE,

Deputy Clerk U. S. District Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, ss:

I, Fisher Bachrach one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Six Thousand (\$6,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

FISHER BACHRACH.

Sworn to before me the 9th day of February, 1911.

[SEAL.]

HARRY F. RABE,

Deputy Clerk U. S. District Court, S. D. O.

- *Motion to Quash.*

And afterwards, to-wit: on the 11th day of February, A. D. 1911, came the Defendant by her Attorney and filed in the Clerk's Office of said Court, a certain Motion to Quash, in this cause, which said Motion to Quash is clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 797.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
DELLA BENNETT, Defendant.

Motion to Quash.

And now comes Della Bennett, defendant herein, and moves the Court to quash each and every count of the indictment for the following reasons, to-wit:

First. Because the same is so vague, indefinite and uncertain as not to thoroughly advise the accused with what she stands charged.

Second. Because each of the three counts in the indictment charge the defendant with more than one offense.

Third. Because each of the counts in the indictment does not charge the defendant with a crime against any law of the United States.

MAX LEVY,
Attorney for Defendant.

6

Demurrer.

And afterwards, to-wit: on the same day, the following Demurrer was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 797.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
DELLA BENNETT, Defendant.

Demurrer.

Now comes Della Bennett, defendant herein, and demurs to each of the three counts in the indictment, separately and jointly, for the following reasons, to-wit:

First. Because the facts stated therein do not constitute an offense punishable under the laws of the United States.

Second. Because the Act of June 25, 1910, 36th Statute, 825, known as the "White Slave Traffic Act," for the violation of the provisions of which Statute the Indictment against this defendant is based, is unconstitutional and void.

Third. Because each of said Counts in the Indictment charges this defendant with more than one offense.

Fourth. Because the intent is not alleged in the various counts in the Indictment, proof of such intent being necessary to make out the offenses charged.

MAX LEVY,
Attorney for Defendants.

Entry, 10—317.

And afterwards, to-wit: on the 14th day of February, A. D. 1911, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

No. 797.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
DELLA BENNETT, Defendant.

Entry Overruling Motion to Quash.

This cause coming on to be heard upon the motion to quash the indictment herein, on the arguments of counsel, and the Court being fully advised in the premises, finds said motion to be not well taken, and overrules the same, to all of which the defendant through her counsel excepts.

7

Entry, 10—317.

And afterwards, to-wit: on the same day, an Entry was made upon the Journal of said Court, in said cause, which said Entry is clothed in the words and figures following, to-wit:

No. 797.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
DELLA BENNETT, Defendant.

Entry Overruling Demurrer.

This day this cause came on for hearing upon the demurrer of the defendant to the indictment heretofore found herein, and was argued by counsel and submitted to the Court, and upon consideration, the Court finds that the demurrer is not well taken, and does overrule the same, to which finding and overruling the defendant through her counsel excepts.

Entry, 10—324.

And afterwards, to-wit: on the 20th day of February, A. D. 1911, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA

VS.

DELLA BENNETT.

This day this cause came on to be heard and came the defendant pursuant to the tenor of her recognizance as heretofore given, and by her Attorneys, and came the District Attorney on behalf of the United States; and the said defendant, Della Bennett having been arraigned and said Indictment read to her for plea says she is not guilty in manner and form as charged in said Indictment — for trial puts herself upon the Country and the District Attorney doth the like.

Whereupon to try the issues joined a Jury being called came, to-wit: Oliver Keller, James V. Bonnell, Kemp Coffee, Monte Coffin, James W. Pierce, C. F. Faris, David Mote, Albert Thomas, W. S. Anderson, Charles Street, John Duis, Harry W. Dickensheets, who were duly empaneled and sworn herein well and truly to try the issues joined; and having heard the testimony, the arguments of counsel and the charge of the Court, the said Jury retired to their room attended by an officer of this Court to deliberate upon a verdict. And after due deliberation the said Jury returned the

8 following verdict, to-wit:

We, the Jury herein do find the defendant, Della Bennett, guilty in manner and form as charged in the three counts of said Indictment.

(Signed)

DAVID MOTE, *Foreman.*

To all of which the said defendant by her counsel excepts, and gives notice of a motion for a new trial.

Whereupon the District Attorney moving for sentence the Court, *the Court*, after due consideration deferred sentence until Thursday morning, February 23rd, at ten o'clock, at which time the said defendant is ordered to be present.

Order, 10—326.

And afterwards, to-wit: on the 23rd day of February, A. D. 1911, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

No. 797.

THE UNITED STATES OF AMERICA
VS.
DELLA BENNETT.

This day this cause came on to be heard, and came the said defendant, Della Bennett, pursuant to the tenor of her recognizance, and the District Attorney on behalf of the United States;

Thereupon the District Attorney moving for sentence the Court pronounced the following sentence to-wit: That the said defendant, Della Bennett, be confined in the County Jail of Miami County, Ohio for a period of eleven months, and that she pay the costs of prosecution.

Motion.

And afterwards, to-wit: on the same day, came the defendant, by her Attorney and filed in the Clerk's Office of the Court aforesaid, a certain Motion in Arrest of Judgment, clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 797.

THE UNITED STATES OF AMERICA, Plaintiff,
VS.
DELLA BENNETT, Defendant.

Motion in Arrest of Judgment.

Now comes the said Della Bennett, and moves the Court to arrest judgment in this cause for the following causes, to-wit:

First. That the facts stated in the indictment do not constitute an offense against the laws of the United States of America.

9 Second. That the Statutes which the defendant was charged with violating are unconstitutional.

Third. Because the intent charged against the defendant in each of the Counts of the Indictment is not a criminal intent.

MAX LEVY,
Attorney for Defendant.

Motion for a New Trial.

And afterwards, to-wit: on the same day, came the defendant by her Attorney and filed in the Clerk's Office of the Court aforesaid, a certain Motion for a New Trial in this cause, which said Motion for a New Trial is clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 797.

THE UNITED STATES OF AMERICA, Plaintiff,
VS.
DELLA BENNETT, Defendant.

Motion for a New Trial.

Now comes the defendant, and moves the Court to set aside the verdict heretofore rendered by the Jury, and the judgment herein rendered by the Court, and for a new trial for the following reasons, to-wit:

1st. The Court erred in overruling the motion to quash the indictment.

2nd. The Court erred in overruling the demurrer to the indictment.

3rd. The Court erred in the admission of testimony offered by the Government over the objection and exception of the defendant.

4th. The Court erred in refusing the motion of the defendant, at the close of the testimony of the prosecution, to instruct the Jury to return a verdict of not guilty.

5th. The Court erred in refusing to admit testimony offered by the defendant and excepted to at the time by the defendant.

6th. The Court erred in refusing to give the special charges to the Jury requested by the defendant.

7th. The Court erred in its charge to the jury.

8th. The Court erred in overruling the motion in arrest of judgment.

MAX LEVY,
Attorney for Defendant.

10

Entry, 10—327.

And afterwards, to-wit: on the same day, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

Entry.

No. 797.

THE UNITED STATES OF AMERICA
VS.
DELLA BENNETT.

This cause coming on to be heard upon the motion in arrest of judgment, the Court upon consideration thereof, overrules the same, to which ruling the defendant excepts.

And afterwards, to-wit: on the same day, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

Entry.

No. 797.

THE UNITED STATES OF AMERICA

VS.

DELLA BENNETT.

This cause coming on to be heard upon the motion of the defendant to set aside the verdict of the jury and the judgment of the Court, and for a new trial, and upon the arguments of counsel, and the Court being fully advised in the premises, overrules the same, to which ruling of the Court defendant excepts.

And the defendant, Della Bennet, through her counsel, having given notice of her intention to file a petition in error to the Circuit Court of Appeals, it is on motion ordered that the execution of the sentence and judgment herein against the said defendant be suspended, and that the said defendant enter into a recognizance with security to the approval of the Clerk of this Court in the sum of \$3,000.00, conditioned according to law for her appearance, from day to day hereafter, until such suspension shall be disposed of, and to abide the further orders of this Court.

Recognizance.

And afterwards, to-wit: on the same day the following Recognizance was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,

Southern District of Ohio, ss:

Be it remembered, that on this 23rd day of February A. D. 1911 before me, B. E. Dilley, Clerk of the United States District Court, within and for the District aforesaid duly appointed as such by the said Court personally came Della Bennett as principal and John T. Patterson and Hattie Fuller as sureties, and jointly and severally acknowledged themselves to owe the United States of America in the sum of Three Thousand and no-100 (\$3,000) Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to-wit:

The condition of this recognizance is such, that if the said Della Bennett shall personally appear before the District Court of the United States, in and for the District aforesaid, at Cincinnati, Ohio, from day to day hereafter as the Court may order, pending the

filing and allowance of a petition for writ of error to the United States Circuit Court of Appeals for the Sixth Judicial Circuit, in cause No. 797 entitled The United States of America, vs. Della Bennett, and abide the judgment of this Court, to-wit: That said defendant, Della Bennett, be confined in the Jail of Miami County, Ohio, for the period of Eleven (11) months and that she pay the costs of this prosecution, and then and there abide the further order of said Court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

DELLA BENNETT. [SEAL.]
J. T. PATTERSON. [SEAL.]
HATTIE FULLER. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

B. E. DILLEY,
Clerk U. S. District Court, Southern
District of Ohio, Western Division,
By HARRY F. RABE,
Deputy Clerk.

[SEAL.]

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, John T. Patterson one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Six Thousand (\$6,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

J. T. PATTERSON.

Sworn to before me the 23rd day of February, 1911.

[SEAL.]

HARRY F. RABE,
Deputy Clerk U. S. District Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, ss:

I, Hattie Fuller one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Ten Thousand (\$10,000.00) Dollars in real estate in my own
12 name, situate in the County of Hamilton in said District.

HATTIE FULLER.

Sworn to before me the 23rd day of February, 1911.

[SEAL.]

HARRY F. RABE,
Deputy Clerk U. S. District Court, S. D. O.

Order, 10-339.

And afterwards, to-wit: on the 21st day of March, A. D. 1911, an Order was made upon the Journal of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

No. 797.

THE UNITED STATES OF AMERICA

VS.

DELLA BENNETT.

This day came the defendant, Della Bennett, by her Attorneys, and presented her Bill of Exceptions, and the same being examined and found to be true, is hereby allowed, signed, sealed, ordered to be and the same is hereby made part of the record of this cause and filed as provided by law.

Bill of Exceptions.

United States District Court, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, Plaintiff,

VS.

DELLA BENNETT, Defendant.

Be it remembered that this cause came on for hearing on Monday morning, February 20, 1911, before Hon. Howard C. Hollister, Judge; the United States of America being represented by Messrs. Sherman T. McPherson and Thomas Darby; the defendant being present in person and represented by Mr. Max Levy, when the following proceedings were had:

Thereupon the defendant, through her counsel, moved the Court, before the empanelling of the jury, that the United States of America be required to elect which counts of the indictment it will try the defendant on.

This motion, the Court, upon consideration, overruled, to which action of the Court defendant, through her counsel, then and there duly excepted.

Thereupon the defendant, Della Bennett was arraigned and entered a plea of not guilty.

Thereupon the jurors were sworn on their voir dire.

E. C. FULTON, a talesman, was examined on his voire dire as follows:

13 By Mr. LEVY:

Q. Where do you live?

A. Near Peebles, Adams County.

Q. Are you a married man or single?

A. Yes, sir.

Q. May I ask you your age?

A. 42 years old.

Q. Have you been watching these white-slave cases as they have been tried within the last few days?

A. I was present as a spectator in Court.

Q. Have you any prejudice or would you have any prejudice against a person who is charged with a crime of this kind?

A. No, sir.

Q. Have you any prejudice against a woman who is the proprietor of a house of this character?

A. I have no admiration for a person of that type.

Q. I understand, but have you any prejudice?

A. Not enough to influence me or my decisions, I believe.

Q. Could you start out in the trial of the case with the presumption that this woman is innocent of the charge and have that presumption remain with you until she is proven guilty by the testimony?

A. Yes, sir; I can.

Q. You could do that?

A. Yes, sir.

Q. You say you have no admiration for a woman engaged in a business of that kind?

A. No, sir.

Q. And she then already stands prejudiced in your eyes, does she?

A. I have no respect for a person of that kind.

Q. You have no respect for a person of that kind?

A. No, sir.

Q. Then it would be a difficult thing for you to sit on this Jury and conscientiously try this case?

A. I believe that would bias me to a certain extent.

Q. It would bias you?

A. Yes, sir.

Talesman challenged for cause by counsel for defendant.

By Mr. DARBY:

Q. Mr. Fulton, any person without regard to whom he or she may be, or without regard to the character of offense which may be charged is presumed to be innocent of the charge; and in this case the court will instruct you that is the law and that you would not be authorized to sit as a juror and to cast a vote against the defendant until that presumption is removed and you are satisfied from the evidence, beyond a reasonable doubt that she is shown guilty; now that being the law and being so stated by the Court to you do you still feel you would have any prejudice at the outset of this case if the absence of any testimony at all?

A. I would go under the evidence presented here.

Q. And under the instructions of the Court?

A. Yes, sir.

Q. Then whether the woman is engaged in a business that you don't admire you would still be able to give her a fair trial?

A. Yes, sir.

Q. The same as if it were a burglar you would try him fairly though he happens to be a burglar?

A. Yes, sir.

Challenge overruled; exception noted by counsel for the defendant.

(After the examination of the second talesman, Mr. Kemp Coffee, Mr. Fulton was re-examined as follows:)

By Mr. LEVY:

Q. Mr. Fulton, have you read the newspapers about trials of this kind?

A. Yes, sir.

Q. And have you formed an opinion about these cases?

Objected to; objection sustained.

Q. Have you any opinion as to the guilt of these persons, or of this person by reason of what you have read in the newspapers or what you have seen?

Objected to; objection sustained.

Q. Mr. Fulton from what you have heard of these cases and what you have read in the papers, have you formed an opinion as to the guilt of this person?

Objected to; objection overruled.

A. No, sir.

Q. You have not?

A. No, sir.

The Court:

Q. Mr. Fulton, could you give this defendant as fair a trial as you could give any person who happens to be charged with an offense against the law?

A. Yes, sir; I can.

Q. Without any further prejudice against her than you would have against anybody charged with a crime?

A. Yes, sir.

15 Q. You feel in your own heart that you could give her a fair trial?

A. I feel that way.

Q. And until she is convicted by the testimony beyond a reasonable doubt?

A. Yes, sir; I do.

M. B. COFFIN, a talesman, was examined on his voir dire as follows:

By Mr. DARBY:

Q. Where do you live?

A. Clinton County.

Q. And your business?

A. Farmer.

Q. Were you able to hear the statements I made to the gentleman in the box?

A. Yes, sir.

Q. Do you know anything about the case?

A. I do not.

Q. Or are you in any way connected with the Attorneys in the case?

A. No, sir.

Q. Have you any prejudice of any kind?

A. I don't love a woman running a house of this kind.

Q. But the charge is not that the woman runs the house, and it would make no difference whether she runs the house or not; the charge is that she caused to be brought from Chicago to this city two women who should engaged in the business of prostitution here; now would you have any prejudice against her or anybody in advance of the hearing of the evidence?

A. No, sir.

By Mr. LEVY:

Q. What is your first name?

A. M. B. Coffin.

Q. And you live where?

A. Clinton County.

Q. Your age?

A. 43.

Q. Are you married?

A. Yes, sir.

Q. You say you are prejudiced against a woman running a house of this kind?

A. Yes, sir.

Q. And where a woman running a house of this kind is on trial you would have conscientious scruples against her?

16 A. I would be guided by the evidence.

Q. I say would you have conscientious scruples against her?

A. Not particularly.

Q. You would not?

A. No, sir.

Q. Could you go into the trial of this case, Mr. Coffin, with the presumption that this woman is innocent of this charge?

A. Yes, sir.

Q. And notwithstanding the prejudice you have, would you resolve any doubt which may arise in the trial of this case in her favor?

A. As I said before I would be guided by the evidence.

Q. You probably don't understand me; In case there is any reasonable doubt arising in the trial of this case would you resolve that doubt in favor of this defendant?

A. Yes, sir.

Q. Regardless of what her vocation in life is?

A. Yes, sir.

Q. And notwithstanding her vocation in life you would sit in judgment and give her an absolutely fair and honest and impartial trial?

A. Yes, sir.

Q. You would set aside your prejudice against her?

A. Yes, sir.

Q. Do you belong to any society where this question has been discussed?

A. I do.

Q. Have you any opinion on the question?

A. No, I have not; I have never heard this kind of a case discussed in the society.

Q. What has been the nature of the discussion?

A. Well, I don't know; it has been a good while since we had any meeting.

Q. Where the question of the suppression of prostitution was discussed?

A. Yes; I believe so.

Q. And you have then taken part in those discussions?

A. No, sir.

Q. Have you formed an opinion as to that?

A. I have not.

Q. And notwithstanding your membership in a society of that character do you think you could give this defendant a fair and impartial trial?

A. Well, I belong to the Methodist Episcopal Church, and have heard the question discussed in the Conference here in Cincinnati within the last year; that is the only time I ever heard it discussed.

Q. And you think notwithstanding that you could give the defendant a fair, honest and impartial trial?

A. I would be guided by the evidence.

Q. Then you think you could sit in the trial of this case as an impartial juror?

A. I believe that I could; when I say that I mean yes.

Talesman challenged for cause by counsel for defendant; challenge overruled; exception noted by counsel for defendant.

By the COURT:

Q. You say you have some prejudice against the business; is your prejudice against the business also a prejudice against the person?

A. No, sir.

Q. Then I understand you to say that your prejudice is against the business of keeping places of this kind?

A. Yes, sir.

Q. But not against the person?

A. Yes, sir.

By Mr. DARBY:

— Mr. Coffin, in this particular case the fact that you might have a prejudice against this business would that cause you to have any prejudice against this defendant?

A. No, sir.

Challenge overruled; exception noted by counsel for defendant.
Thereupon the Jury was sworn.

Thereupon the case was stated to the Jury by both the counsel for the prosecution and the defendant.

Thereupon the United States of America, to maintain the issues on its part called as a witness, OPAL CLARK, who being first duly sworn testified as follows:

Direct examination by Mr. DARBY:

Q. What is your full name?

A. My name is Opal Clark.

Q. Where do you live?

A. My home is in Canada.

Q. When did you come to Cincinnati the last time?

A. On or about the first of October.

Q. Where did you come from, what city?

A. I came from Chicago, Illinois, to Cincinnati.

Q. That is Cincinnati, Ohio; to this City?

A. Yes, sir.

18 Q. Had you lived in Cincinnati prior to coming here in October of 1910?

A. Beg pardon?

Q. Had you been in Cincinnati before October 1910?

A. Yes, sir.

Q. Did you know Della Bennett, the defendant in this case?

A. Yes, sir; I knew her.

Q. When did you first make her acquaintance?

A. In 1910 about.

Q. In what month?

The COURT: Will you speak out louder?

A. In the year 1910 about the last of February.

By Mr. DARBY:

Q. Did you at any time, live in her house in February of 1910?

A. Yes sir; for a few weeks.

Q. In what business were you engaged at her house at that time?

A. Well, I was a sporting girl.

Q. What was the character of the house that she kept at that time?

A. Sporting house.

Q. Did you make your livelihood in that way while you were living in her house—living in that way?

A. Yes, sir.

Q. Now, when if ever did you leave the house of Miss Bennett in 1910, before October?

A. I left it for five weeks after I was there.

Q. Well, could you give about the date at which you left?

A. No, sir.

Q. After you left her house where did you go?

A. Went to Chicago.

Q. What was your address in Chicago?

A. I went to 2017 Armour Avenue.

Q. After that did you go to any other address in Chicago?

A. Yes, sir; we went to a flat.

Q. Where was that?

A. 5 West Twenty-first street.

Q. What was the number of that flat?

A. The second flat.

Q. While you were at that flat did you get any letters, or have any correspondence with Miss Bennett?

A. Yes, sir; I had letters on about every week.

19 Q. I show you a letter which consists of three pages, marked 1, 2, and 3, dated Cincinnati, Ohio, June 26, 1910, directed to "Dear Jeanette" and signed "Your friend, Della," and ask you if you received that letter at Chicago at that address?

A. Yes, sir.

Objected to by counsel for defendant.

Q. You received that at that address at Chicago?

A. Yes, sir.

Q. Do you know in whose handwriting that envelop and letter are?

(Handing letter to Mr. Levy.)

Q. Will you answer the question as to whose handwriting the letter and envelop are?

A. Miss Bennett.

Q. When you say "Miss Bennett" whom do you mean?

A. The woman sitting there.

Q. That is the defendant in the case?

A. Yes, sir.

Mr. DARBY: We desire to offer in evidence the letter and the envelope.

Counsel for defendant objects because the letter itself shows that no letter was sent to Opal Clark which is the name this woman is mentioned by in the indictment and the indictment shows that Opal Clark was the person who was transported.

Q. You have given your name as Opal Clark, is that your name?

A. That is the name I have taken along before Christmas.

Q. You took that name—were you known as Jeanette Clark?

A. Yes, sir.

Q. Are you the person, Jeanette Clark, to whom these letters were written?

A. Yes, sir.

Q. And did Miss Bennett know you by the name of Opal Clark?

A. No, sir; I don't think she knew me by that name.

The COURT:

Q. What name did you go by when you lived with her?

A. I went by the name of Jeanette.

Q. But you are the person who was living at Flat No. 2, 5 West Twenty-first street?

A. Yes, sir.

20 By Mr. DARBY:

Q. Did you answer some of the letters you received from her?

A. Yes, sir

Q. And got replies to them?

A. Yes, sir.

(Counsel for defendant renews his objection.)

(Objection overruled; defendant excepts.)

Mr. DARBY: The envelope is addressed to "Miss Jeanette Clark 5 West 21st Street, Flat 2, Chicago, Illinois."

Mr. LEVY: I would like to before the letter is introduced have the witness qualified as to the handwriting of the defendant in this case.

Motion overruled; exception noted.

Mr. DARBY: The letter is in these words:

CINCINNATI, OHIO, *July 26th*, 1910.

DEAR JEANETTE: I will answer your most welcome letter which I received the other day. I am ashamed for not answering sooner, but I have been so busy.

I am not mad at you at all I have no reason to be mad at you. You never did anything to me at all. I wish you would come back home it is so lonesome here without you; your friends come in all the time and ask for you. Now Jeanette come back soon; be here for the Exposition will you. I know business will be good here then; all the girls send their love to you. I have a lot of new girls now but all nice ones, now be sure and come back soon and bring some girls with you. Mr. — is back and looks fine, he sends his best to you. I will close. Inez and I are going to Chester Park to-night. Answer soon and tell me when you are coming. I have all your clothes in my room. Good-bye, love from all.

Your friend,

DELLA.

Give Joy my best, tell her to write."

Mr. LEVY: I move that the letter be stricken from the record. Motion overruled; exception noted.

Envelope was marked by stenographer, "Ex. 1."

The first sheet of letter "Ex. 2" the second sheet of letter "Ex. 2-a" the third sheet of letter "Ex. 2-b."

It is agreed between counsel that copies of the envelope and letter may be made and attached to this Bill of Exceptions, in lieu of the original; the said copies are hereto attached and made part hereof. Said originals shall be presented to the Circuit Court of Appeals.

21 Q. Mr. Clark, I will ask you to look at this letter, which is dated "Cincinnati, Ohio, August 3, 1910, directed to "Dear Jeanette" and signed "Miss Della Bennett, 525 George Street" and also the envelope and ask you to state if you know whose handwriting that is?

A. It looks to be in her handwriting.

Mr. LEVY: I didn't hear the answer.

A. It looks to be her handwriting only in ink.

By Mr. DARBY:

Q. Will you say to the best of your judgment—give your best judgment as to whether or not that is or — not her handwriting?

Objected to by counsel for defendant.

Q. State whether or not, that is the handwriting of Miss Bennett, the defendant?

A. Yes, sir; I think it is.

Mr. LEVY: What's the answer?

A. I think it is.

Objected to by counsel for defendants and motion made to strike out.

The COURT: The question is, whether that is her handwriting, is it, or not?

A. Yes, sir; it is; only in ink.

Mr. DARBY: We offer in evidence, envelopes addressed to Miss Jeanette Clark, Flat 2—5 West 21st Street, Chicago, Illinois, and postmarked "Cincinnati, Ohio, August 4, 1910; and the letter as follows:

Counsel for defendant objects to the introduction of the letter; objection overruled; exceptions noted by counsel for defendant.

Mr. DARBY (reading):

CINCINNATI, O., Aug. 3d, 1910.

DEAR JEANETTE: I just received your card we are all well and hope this letter will find you the same well Jeanette. I wish you would hurry and come back we are all lonesome to see you. rouse was in the other night and gave me 50c for you to have a drink when you come back. now come soon will you. bring another girl with you or more if you can. Idabelle has been sick but is feeling better now. now Jeanette be sure and come back soon. I will close hoping to hear from you soon and make up your mind to come back soon I will close good-by your friend.

Miss DELLA BENNETT,

525 George Street.

Come back soon.

22 Envelope was marked by the stenographer: "Ex. 3". First page of letter was marked "Ex. 3-a" second page of letter was marked "Ex. 3-b".

By agreement of counsel copies are substituted for the originals, the same are hereto attached and made part hereof.

Counsel for defendant moved the Court that the letter be stricken from the record; motion overruled; exception noted by counsel for defendant.

Q. Had you written a card to her?

A. I had written a card to her saying I had received her letter.

Q. And this letter came afterwards?

A. Yes, sir.

Q. I will ask you to look at this. I show you a letter and envelope; the envelope being post-marked "Cincinnati, O., Aug. 11, 1910" directed to "Miss Jeanette Clark, 5 W. 21st St., Chicago, Ill., Flat 2" and the letter dated "August 10, 1910 directed "Dear Friend Jeanette" and signed "Your friend Della" and ask you if you know in whose handwriting those papers are?

A. Miss Della.

Q. By that you mean whom?

A. Miss Della Bennett.

Q. This defendant?

A. Yes, sir.

Mr. DARBY: We offer them in evidence.

To the introduction of the envelope and letter Counsel for defendant objects; objection overruled; exception noted by counsel for defendant.

Envelope was here marked by the stenographer: "Ex. 4" the first page of letter "Ex. 4-a" the second page of letter "Ex. 4-b". By agreement of counsel copies are substituted for the originals, the same are hereto attached and made part hereof.

Mr. DARBY: The envelope is post-marked "Cincinnati, O., Aug. 11, 1910;" directed to "Miss Jeanette Clark No. 5 W. 21st St., Chicago, Ill., Flat 2". The letter is as follows:

CINCINNATI, O., Aug. 10th, 1910.

DEAR FRIEND JEANETTE: just received your letter the other day. Well why don't you come back to Cin. We are lonesome for you, business is very good now. idabelle is well and sends her best regards to you. the weather is fine here. frouse was in last night and went up stairs with Louise. Mr. ——— is well and wants you to come back. Now when you come bring some girls with you. as I will need lots of girls for the fair, the fair starts 1 week from next Monday. so be sure and come next week sure. will you now
23 Jeanette don't disappoint me will you be sure and come next week sure. I will close hoping to hear from you at once. your friend Della. Good by.

Counsel for defendant moves to strike the letter from the record; motion overruled; exception noted by counsel for defendant.

Q. I will ask you now to look at this letter dated "August 24, 1910 directed to "Dear Jeanette" and signed "Miss Della Bennett 525 George St.," and state if you know, whose handwriting that is.

A. That is her handwriting.

Q. By her you mean whom?

A. Miss Della.

Q. The defendant in this case?

A. Yes, sir.

Q. How did you receive this letter?

A. In an envelope.

Q. By what means?

A. I received it in an envelope.

Q. By messenger or mail?

A. By mail.

Q. Have you the envelope?

A. Yes, sir.

Letter offered in evidence by Counsel for Plaintiff.

To the introduction of the letter counsel for defendant objects;
objection overruled; exception noted by counsel for defendant.

Mr. DARBY (reading):

CINCINNATI, O., Aug. 24th, 1910.

DEAR JEANETTE: I will answer your letter I received a few days ago. I am very sorry you are sick. And hope by the time this letter reaches you that you will be well and ready to come back to Cincy. The Exposition opens Monday and business is fine now Jeanette I only have 7 girls so try and come and bring some girls with you. If you don't want to come for good just come for the Exposition as things are getting fine now. now Jeanette do me this favor and come and help me out will you. I will send tickets for as many girls as you can bring with you. I will not write very much this time but be sure and come will you. if you will come and help me out I will get you a nice present. Mr. ——— sends his love to you and also all the girls. now please come will you. I will close. Your true friend,

Miss DELLA BENNETT.

525 George St.

Be sure and send me a telegram at once Cincy and I will send as many tickets as you need.

24 First page of letter was here marked by the stenographer
"Ex. 5;" second page "Ex. 5-a" and by agreement of counsel
copies are substituted for the originals, and the same are hereto attached and made part hereof.

Q. There is something on the back of it, is this part of the same letter?

A. No, sir; I wrote this on the back.

Q. You wrote this on the back?

A. Either I or Eva.

Q. This is not the handwriting on the back of Miss Della?

A. No, sir.

Q. Now you said you came to Cincinnati at what time or about what time?

A. The last time?

Q. Yes?

A. About the first of October.

Q. Did you have any further letters from Miss Bennett, the defendant?

A. I think that's the last letter; the last one she wrote. Then I had some telegrams.

Q. You'll have to talk louder?

A. I think that was the last letter, then I had some telegrams sent to me.

Q. Did you receive any messages of any kind, shortly before you came to Cincinnati?

A. I received a telegram.

Q. Have you that telegram?

A. I misplaced it some place.

Q. From whom was it?

A. From Miss Bennett.

Q. After receiving that telegram what, if anything, did you do relative to coming to Cincinnati?

A. I beg pardon.

(Question read.)

A. Do you mean got another letter or what?

Q. Did you get another letter?

A. No; I got the telegram.

Q. Then what did you do after you got the telegram?

A. Well, I got the telegram asking me if I was coming.

Q. Have you got the telegram?

A. No sir, it was misplaced, I had it in my possession.

Q. Can you now produce that telegram that you received?

A. No, sir.

Q. What were the contents of it?

Objected to.

25 The COURT: The telegram was sent from here?

Mr. DARBY: Yes sir.

Objection sustained.

Q. What did you do after you got the telegram?

A. Well after I got the telegram I wrote her a letter.

A JUROR: Speak louder.

A. After I got the telegram I wrote her a letter.

Mr. DARBY:

Q. What did you tell her in that letter?

A. I told her I would come, but I didn't know whether I could come for the Fair or not.

Counsel for defendant objects to the contents of a letter that the witness wrote to the defendant.

Objection overruled; exception noted by counsel for defendant.

Q. What did you write to her in that letter?

A. I wrote to her in that letter that I would come but I didn't know whether I could get there for the fair or not.

Q. And what followed that; what was the next thing that happened?

A. A telegram reached me.

Objected to by counsel for defendant.

Q. Another telegram?

A. Yes, sir.

Q. Now after you got that telegram what did you do—the last telegram?

A. After I got the last telegram—that was the first telegram I got.

Q. Well, did you write again after receiving the telegram last referred to?

A. Yes, sir.

Q. What did you say in that letter?

Objected to by counsel for defendant. Objection overruled; exception noted by counsel for defendant.

Q. What did you say to her in the last letter referred to?

A. I told her I didn't know whether I could bring any girls or not, but I would try.

Q. What did you do with reference to bringing girls?

A. I just told my friend I was coming and she said she was coming too.

Q. Who was your friend?

A. Eva Parks.

Q. What did you and Eva Parks do with reference to coming to Cincinnati?

A. We got ready to come then this Joy Handy—

Q. Never mind about Joy Handy, what did you do; did you come to Cincinnati?

26 A. Yes, sir; the tickets were sent. A telegram came then saying that the tickets were at the Depot.

Objected to and motion made by counsel for defendant that answer be stricken out; sustained.

Q. Did you get to the Depot?

A. Yes, sir.

Q. What Depot?

A. Big 4.

Q. In what City?

A. Chicago.

Q. Did you get anything there?

A. Yes, sir.

Q. What did you get there?

A. Two tickets.

Q. For what?

A. To come to Cincinnati.

Q. By what line; on what road?

A. Big 4.

Q. Did you pay for those tickets?

A. No, sir.

Q. Did Eva Parks pay for her ticket?

A. No, sir.

Q. Then having the tickets you came to Cincinnati over that Railroad, did you?

A. Yes, sir.

Q. And when you got in here what did you do—where did you go?

A. I went to the restaurant and from the restaurant to Miss Bennett's.

Q. That is Miss Bennett, the defendant?

The COURT: A little louder.

A. To Miss Bennett, the defendant.

By Mr. DARBY: Did you come directly from Chicago to Cincinnati?

A. Yes, sir.

Q. Did Eva Parks come with you directly from Chicago to Cincinnati?

A. Yes, sir.

Q. So that you started together and arrived here together?

A. Yes, sir.

Q. What time of the day was it that you left Chicago?

A. We left in the night at 11:45 and we got here in the morning about 8 o'clock.

Q. Now when you did arrive to Della Bennett at that time did you see her?

27 A. Yes, sir; she got up.

Q. Then what did you and this Parks girl do at that house?

A. Well, we had some dinner—a glass of beer.

Objected to; objection sustained.

Q. When you came into the house of Della Bennett what did you do?

A. Well we asked for Miss Della and she came downstairs.

Q. Well then, did you stay there for sometime?

A. Yes, sir.

Q. How many days did you remain at Miss Bennett's house?

A. I remained there about three weeks.

Q. And while you were there what did you do for a livelihood, for a living?

A. Sporting.

Q. By that did you receive men?

Question objected to by counsel for defendant and motion made to rule out answer.

Mr. DARBY: I thing it perfectly proper to put a leading question.

The COURT: Ask her what she means by that.

Mr. DARBY: What do you mean by the word "sporting?"

The COURT: I rule for the present that it may go out.

Mr. DARBY: What do you mean by the word "sporting?"

A. Well, what I mean by that is receiving men, seeing men.

Q. Was that for money?

Objected to.

A. Yes, sir.

Counsel for defendant moves that answer be stricken out. Motion granted.

Q. Was there any consideration paid to you for your receiving men as you have described?

Objected to by counsel for defendant as leading and suggestive. Objection overruled; exception noted by counsel for defendant.

Q. State whether or not any consideration was paid to you for receiving men as you have described at the house of Della Bennett, after you arrived at Cincinnati?

Objection to for the same reasons; objection overruled; exception noted by counsel for defendant.

A. What do you mean did they pay me?

28 Q. Yes.

A. Yes; they paid me.

Q. Now, how long did Eva Parks stay in that house to your knowledge?

A. Well, she stayed there sometime after I left there.

Q. And she was there when you left?

A. Yes, sir.

Q. Now what if any conversation did you have with Miss Bennett after your arrival here with reference to the sending of tickets to Chicago?

A. Well, all that was said——

Objected to as leading; objection overruled; exception noted by counsel for defendant.

Q. Answer the question?

A. What conversation with her?

The COURT: If any, what conversation did you have?

A. All the conversation was I just said the other girl couldn't come that was coming with us and that was all that was said.

By Mr. DARBY:

Q. Was there anything said there with reference to sending tickets any number of tickets to Chicago?

Objected to; objection overruled; exception noted.

(Question read.)

The COURT: I think you better confine it to what the entire conversation was then.

Objected to; objection overruled; exception noted by counsel for defendant.

By Mr. DARBY:

Q. Did you listen to the question as it was read?

A. There was no more said about sending tickets.

Q. Did you talk with Miss Bennett or did you hear her say anything to any one further about the subject of tickets and Chicago?

Objected to. (Question read.) Objection overruled, exception noted by counsel for defendant.

A. There was no more said about tickets after I came.

Q. Did you hear her send any message to any one relative to the matter of sending tickets to Chicago?

Objected to; objection overruled; exception noted.

A. No, I never have.

Q. Did you hear her telephone to any one about that matter?

A. No; I never only heard her say about the three tickets.

Q. What if anything did she say with reference to the three tickets?

29 A. Well, she said she would get the money back.

Q. To whom did she say that?

Objected to; question withdrawn.

Q. State whether or not Miss Bennett said anything to you with reference to the three tickets?

A. All she said—

Q. Did she say anything to you?

A. She said it to all the girls.

Q. Were you present?

A. Yes, sir.

Q. What did she say about those three tickets?

A. She said, well, she would get the money back.

Q. Give us the rest of the conversation?

A. She said she would get the money back but she had to wait a few days.

Q. Was anything further said at that time?

A. No, sir.

Q. Did she say what money?

A. Money for the tickets.

Q. What tickets?

A. Five tickets were sent and two were used.

Q. Did you hear her say anything to anybody else either in the house or to any person out of the house about that?

A. No, sir.

Q. Did she send any telephone message in your presence?

Objected to; objection overruled; exception noted.

A. No, sir.

Q. She did not?

A. No, sir.

Q. Now, I want to show you this paper and which for the purpose of identification we will have marked "5" and ask you to look at this signature over the word "deposition" and state in whose handwriting that is?

A. Miss Bennett.

Q. By Miss Bennett, you mean whom?

A. The defendant.

Q. The words "Della Bennett" you say are in her handwriting?

A. Yes, sir.

Q. Now, I show you this other paper, which for the purpose of identification we will mark "6" and ask you to look at the first indorsement on the back of it and state in whose handwriting that indorsement is?

A. Miss Bennett. Miss Della Bennett.

30 Q. By Miss Della Bennett, you mean whom; the defendant in this case?

A. Yes, sir.

Q. You say the words are in what?

A. In her handwriting.

Q. These words "Miss Della Bennett?"

A. Yes, sir.

Q. Do you know whether Eva Parks had been at Miss Della Bennett's house before this time in October?

A. No, sir.

Q. By what name was she known at that house when she went there?

A. Well her name was Grace there.

The COURT: Speak out louder.

A. Grace Parks.

By Mr. DARBY:

Q. She was known as what?

A. By the name of Grace Parks.

Q. Now, when this arrest was made and you were brought before the Commissioner was the defendant, Della Bennett, present?

A. No, sir.

Q. You were present at the hearing before the Commissioner in the District Attorney's office?

A. Well, I was present about an hour before she came.

Q. Did you testify there?

A. No, not that I know of, just told them what I did do.

Q. Did you tell them your name?

A. Yes, sir.

Q. Did you there give them the name of Opal Clark?

A. Yes, sir.

Objected to; objection sustained.

Q. What name did you give before the Commissioner as your name in the presence of the defendant; what name did you give?

Objected to; objection sustained.

Counsel for plaintiff reserves the right to prove the telegrams later.

Cross-examination.

By Mr. LEVY:

Q. Miss Clark, please tell us your age—how old are you?

A. I am 22.

Q. 22?

A. Yes, sir.

31 Q. Do you know what age you gave when you were taken before the United States Commissioner?

A. 23.

Q. Yes, and since you have been arrested you have become one year younger?

A. No, sir; I won't be 23 until June; this coming June.

Q. And where were you born?

A. I was born in Canada.

Q. What is the date of your birth?

A. June 21, 1888.

Q. June 21, 1888?

A. Yes, sir.

Q. And when did you leave Canada?

A. I left Canada when I was 11 years old.

Q. Are you married or single?

A. I am married.

Q. When were you married?

A. I was married in the year 1905.

Q. Where were you married?

A. I was married in Detroit.

Q. Detroit, Michigan?

A. Yes, sir.

Q. Your husband's name is what?

A. Laplante.

Q. Were you ever divorced from him?

A. No, sir.

Q. So Laplante is your right name now?

A. Yes, sir.

Q. What was your maiden name?

A. My maiden name is Demass.

Q. Spell that?

(No answer.)

Q. Have you any children?

A. I have one.

Q. How old is that child?

A. Three years old.

Q. Boy or girl?

A. Girl.

Q. Where is that child?

A. With my sister.

Q. Where does your sister live?

A. Quebec, Canada.

Q. How long have you been engaged in sporting?

A. About two years.

Q. About how many years?

A. About two years.

32 Q. That is you started in the sporting life then in 1909?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now you are not mistaken about that?

A. No, sir.

Q. Where did you start your sporting life?

A. In Chicago.

Q. In Chicago, in whose house?

A. A woman by the name of Fanny Wilson.

Q. Where was her place?

A. At 2109 Dearborn street.

Q. Was Joy Handy an inmate with you at that time?

A. Not at that time; no, sir.

Q. How long did you remain at Fanny Wilson's house?

A. I remained there about five months.

Q. Is that all?

A. Then I went to——

Q. Is that all?

A. That is all, then.

Q. And from Fanny Wilson's where did you go?

A. I went to Detroit.

Q. Did you go to a sporting house there?

A. No, sir.

Q. Did you do any sporting in Detroit?

A. No, sir.

Q. How long did you remain in Detroit?

A. I remained about two months in Detroit.

Q. From Detroit where did you go?

A. I came back to Chicago.

Q. In whose house did you go then?

A. Miss Fanny Wilson's.

Q. Back to Fanny Wilson?

A. Yes, sir.

Q. And how long did you remain at Fanny Wilson's the second time?

A. Well, I remained there about a couple of months.

Q. A couple of months?

A. Yes, sir.

Q. And from there where did you go?

A. From there I went to Mable Mack's.

Q. To whom?

A. Mable Mack; a flat.

Q. She also ran a house of prostitution?

A. A sporting flat.

33 Q. It was where you would meet men?

A. Yes, sir.

Q. Prostitution?

A. Yes, sir.

Q. And how long did you remain at Mable Mack's?

A. I remained there about two months.

Q. Now you were an inmate of a house in Chicago at 2017 Armour Avenue?

A. Yes, sir.

Q. Whose house was that?

- A. I forgot the woman's name.
Q. Whose house was that?
A. I can't think of her name.
Q. How long were you an inmate of 2017 Armour Avenue?
A. I don't think very long; about four weeks.
Q. How long were you an inmate of a house at 2109 Dearborn Street?
A. About 8 months.
Q. Who ran that house?
A. Fanny Wilson.
Q. How long were you an inmate of a house at No. 5 West 21st St.?
A. About a month before I came to Cincinnati.
Q. Where you in a place known as Searchlight in Chicago?
A. That is Fanny Wilson's.
Q. Now in Cincinnati you were an inmate of Della Bennett?
A. Yes, sir.
Q. How many different times?
A. Three times.
Q. Three or four times?
A. Three times.
Q. When were you here?
A. I was here in February.
Q. Next?
A. Then she sent for me in June and I went away and came in October.
Q. Weren't you here in February, May, July and October?
A. Yes, sir; I came in October.
Q. You were there four times?
A. Three times.
Q. February, May, July and October?
A. I came in May and stayed until July and I went away and I came in October, it was.
34 Q. Were you an inmate of Emma Harris' house at any time in Cincinnati?
A. Yes, sir.
Q. Were you an inmate of Maud Clark's in Cincinnati?
A. Yes, sir; for a few days.
Q. Were you an inmate of Grace Martin's in Cincinnati?
A. Yes, sir.
Q. What other houses of prostitution have you been in?
A. That is all.
Q. Now, then, madam, I want you to tell this jury if it is not a fact that you have been engaged in sporting for the past five or six years?
A. No, sir; I have not.
Q. You have not?
A. No, sir.
Q. You have been separated from your husband for how long?
A. Well, I have been away from him several different times.
Q. Now, I want you to tell this jury whether or not you know a man by the name of Tommy Owens?

A. Yes, sir; I do.

Q. Where is he now?

A. He is in Chicago.

Q. What business is he in?

A. He is a bar tender.

Q. What place?

A. At Tom Little's place.

Q. What is the place known as?

A. The Imperial.

Q. There is a saloon in front and a sporting house in the rear?

A. Yes, sir.

Q. You were an inmate of that house?

A. No, sir.

Q. Did you ever meet men in that place?

A. No, sir.

Q. You say you did not?

A. No, sir.

Q. Did you ever go to that place with Joy Handy?

A. I went there and had drinks.

Q. Now I want you to tell the jury whether or not this Tommy Owens was known as your man?

A. Yes, sir; he was.

35 Objected to by counsel for the prosecution.

Mr. LEVY: I feel it is so important that I want to make this statement because I don't want the rights of any persons prejudiced here.

The COURT: Well, go on.

By Mr. LEVY:

Q. I want you to tell this jury whether or not it is not a fact that you out of your earnings as a prostitute sent money to this Tommy Owens for his support?

Objected to; objection overruled.

A. Yes, sir; I sent him some money not much.

Q. Now, I want you to tell this jury whether or not you did not have another man in Chicago by the name of George?

A. Yes, sir; I had.

Q. What was his last name?

A. George Day.

Q. I want you to tell this jury whether or not you know what has become of this George Day?

Objected to.

A. I don't know what becomes of him.

Q. Didn't you tell Louis Wilson that this George was *George* was sent to the penitentiary for violating the age of consent law with two little girls?

Objected to; objection sustained; exception noted by counsel for defendant.

Q. I want you to tell the jury whether or not in the City of Chicago you were addicted to smoking a pipe with Tommy Owens containing dope?

A. No, sir; I was not.

Q. I want you to tell the jury whether or not yourself and Tommy Owens smoked dope in a place known as the Alhambra?

A. No, sir; he did but I never did in my life.

Q. Didn't you come to the place where you lived, I think Millie Evans', under the influence of that?

A. No, sir.

Q. Didn't you admit to Joy Handy in Chicago, that you smoked this dope?

A. I said that it made me sick the smell of it but I never used it in my life.

Q. Did you say that to Joy Handy?

A. I just said it made me sick.

Q. I want you then to tell this jury whether or not it was necessary for Millie Evans to call in officers to put you out because you were raising a disturbance while under the influence of dope?

36 A. No, sir; it was because Miss Mabel wanted me to come back and I had been drinking a little and she didn't want me to leave her place and I said I was going to leave anyhow.

Q. I want you to tell the jury whether or not in Chicago you worked what is known as the panel-game?

A. No, sir.

Q. Didn't you tell Miss Louise Wilson that in Chicago you worked the panel-game?

A. No, sir; I told her I was in a panel house, but the landlady worked the panel game.

Q. Now, tell the jury what a panel is?

Objected to; objection sustained; exception noted by counsel for defendant.

Q. Is it not a fact Miss Clark, that the panel game is where you get men in a room, get them in a compromising position, and then a man comes in claiming to be the injured husband, and you shake him down for money?

Objected to; objection overruled.

Q. Answer the question

A. I don't know anything about the panel game only that the landlady had all to do with the panel game.

Q. Who was the landlady?

A. A woman by the name of—she was sent to the penitentiary, a French woman; she was Madam Eva.

Q. And you were an inmate of that house?

A. Yes, sir.

Q. Didn't you tell Louise Wilson that you worked the panel game and gave the money you got from the panel game to your man in Chicago?

A. No, sir; I never did.

Q. Will you tell the jury how long you were an inmate of the house that played the panel-game?

A. I was an inmate about seven weeks.

Q. Now do you know a man in Cincinnati by the name of Sam Tweedy?

A. I know of him.

Q. Do you know him personally?

A. No, sir; I don't know.

Q. Do you know whether he is a white man or a colored man?

A. He is colored.

Mr. LEVY: Sam stand up please.

(Here a colored man from the audience in the Court-room came forward.)

Q. Do you know this man?

A. I seen him that is all.

37 Q. Did you ever write him any letters?

A. He wrote me a letter.

Q. Did you ever write him any letters?

A. I wrote one letter.

Q. On one.

A. That is all.

Q. Did you ever live with him as man and wife?

A. No, sir.

Q. You never did?

A. No, sir.

Q. Did you ever have intercourse with this man?

Objected to.

A. No, sir.

The COURT: This is too far—too collateral; the objection is sustained.

(Question read.)

By Mr. LEVY:

Q. Did you ever have intercourse with this man at a place down on West Sixth Street known as the Iron Steps between Central Avenue and John?

A. No, sir.

Q. Tell this jury whether or not this is your handwriting?

A. (Handing letter to witness.) Yes, sir, it is.

Q. To whom was this letter sent?

A. To this man.

Q. To Sam Tweedy, this colored man?

A. Yes, sir.

Mr. LEVY: I would like to read this letter.

The COURT: Hand it up here. (The Court reads letter.)

Objected to; objection sustained; exception noted by counsel for defendant.

Mr. LEVY: I want it marked for identification.

(The envelope and the two pages of the letter were marked by the stenographer) "Ex. A for identification."

Recess until two o'clock P. M.

Afternoon Session.

And also ROBERT C. BLISS, being first duly sworn, testified as follows:

Direct examination.

By Mr. DARBY:

Q. Mr. Bliss, will you state your full name?

A. Robert C. Bliss.

Q. You live in Cincinnati?

A. Yes, sir.

38 Q. What is your occupation?

A. Manager of the Western Union Telegraph Company.

Q. At what point?

A. Cincinnati.

Q. You were subpoenaed to produce certain telegrams sent from Cincinnati to Chicago in September 1910 to Jeanette Clark have you those papers with you?

A. I have.

Q. I show you this paper, can you state the date of that message?

A. September 28th.

Q. Of 1910?

A. 1910; yes, sir.

Q. And this one can you state the date of that message?

A. 27th of September.

Q. Of the same year?

A. Yes, sir.

Q. Now these were taken from the files of your office and were telegrams deposited there for transmission?

A. Yes, sir.

Q. And were transmitted?

A. They were.

Cross-examination.

By Mr. LEVY:

Q. You of course don't know who sent those telegrams, do you?

A. No, sir; I do not.

Mr. DARBY: Before the cross-examination continues your Honor we would like to conclude as to this part of the case.

Mr. LEVY: I am entitled to complete my cross-examination.

The COURT: This is to complete what was left out this morning.

Mr. LEVY: All right.

OPAL CLARK here resumed the stand.

Direct examination continued.

By Mr. DARBY:

Q. I will get you now, if you can to give to the Court and jury the details and the wording of any of the messages you received from Della Bennett in September of 1910?

Mr. LEVY: I ask that the witness be required to answer yes or no.

39 Mr. DARBY: Can you give us the words of any of those messages just as they were sent to you?

A. Yes, sir.

Q. Have you any of the messages in your possession which you received at Chicago?

A. I have none now; I lost them.

The COURT: Speak out louder, please.

A. I have none now; I lost them.

By Mr. DARBY:

Q. I show you these two pieces of paper; one being a deposit ticket on the First National Bank, pasted on a Western Union Telegram Blank, dated September 27th and ask you to state in whose handwriting that is?

Objected to.

The COURT: You were asked if you know in whose handwriting that paper is?

A. Yes, sir.

By Mr. DARBY:

Q. In whose handwriting is that message?

A. Della Bennett.

Q. The defendant in this case?

A. Yes, sir.

Q. Did you receive such a message from her in Chicago?

A. Yes, sir.

Q. Just read it.

Mr. LEVY: I want to make the same objection because the paper is addressed to Jeanette Clark.

Objection overruled; exception noted by counsel for defendant.

Mr. LEVY: I make a further objection on the ground that the witness says she remembers what the telegram contains, without these papers.

Mr. DARBY: This is the original paper now signed by the defendant.

The COURT: Her memory is secondary evidence.

Mr. DARBY: I should not have asked that question without the papers in my hands.

Q. Just read the message you have to yourself and then just state whether you received such a message in Chicago?

Objected to by counsel for defendant; objection overruled; exception noted.

A. That's the same I received in Chicago.

Mr. DARBY: We offer this in evidence, it is pasted on a Western Union Telegram Blank dated Sept. 27, Miss Jeanette Clark No. 5 W. 21st St., Chicago, Ill. Answer will I send ticket to you or not. Della Bennett, 525 George St., Cincinnati". Telegram marked by the stenographer "Ex. 7" and by agreement of counsel copy is substituted for the original, the same is hereto attached and made part hereof.

Counsel for defendant objects and moves that the telegram be stricken from the record; objection and motion overruled; exception noted by counsel for defendant.

Q. I ask you to look at this paper and ask you if you know in whose handwriting that pencil mark is?

A. That is Miss Bennett's.

Q. By Miss Bennett you mean whom?

A. The defendant.

Q. Did you receive a message like that in Chicago?

A. Yes, sir.

Mr. DARBY: We offer this in evidence, your Honor.

Objected to; objection overruled; exception noted by counsel for defendant.

Mr. DARBY: This is a Western Union Company telegraph Blank with a piece of paper pasted on the face of it.

"Cincinnati, Miss Jeannette Clark No. 5 W. 21st St., Chicago, Ill. 5 tickets are on way send telegram when you leave. Della Bennett".

Then scratched out but easily read are the words "525 George St., Cincinnati." Please rush this 525 George St."

Paper marked by the Stenographer Ex. 8. By agreement of counsel copy is substituted for the original, the same is hereto attached and made a part hereof.

Objected to by counsel for defendant; objection overruled; exception noted by counsel for defendant.

Q. I show you now a telegraph blank dated 9-29 and directed to Jeanette Clark No. 5 W. 21st St., Chicago, Ill., and ask you if you know in whose handwriting that is?

A. Miss Bennett.

Q. The defendant Miss Bennett?

A. Yes, sir.

Q. Did you receive such a message like that from her?

A. Yes, sir.

Mr. DARBY: We offer in evidence this message your Honor.

Same objection; objection overruled; exception noted by counsel for defendant.

On the Blank of the Western Union Telegraph Company: "9-29 To Jeanette Clark: No. 5 W. 21st St., Chicago, Ill. 5 tickets at 12th

St. Station, leave there Friday to get here Saturday. Della Bennett."

41 Counsel for defendant moves to have the telegram just read stricken from the record; motion overruled; exception noted by counsel for defendant.

Paper marked by stenographer "Ex. 9" and by agreement of counsel copy is substituted for the original, the same is hereto attached and made part hereof.

Q. What is the 12th St. Station in Chicago; what railroad?

A. The Big Four.

Cross-examination (continued).

By Mr. LEVY:

Q. Now, madam, this morning you told me that your right name was Laplante, what is your first right name?

A. Jeanette.

Q. Your right name is Jeanette?

A. Yes, sir.

Q. That is your right maiden name, was it?

A. Yes, sir.

Q. Did you ever go by the name of Nellie?

A. I went by that name.

Q. By how many different names have you gone?

A. Just Opal and Nellie.

Q. And Jeanette?

A. Jeanette is my right name.

Q. You never went by the name of Laplante in any of these houses?

A. No, sir.

Q. Now this morning when I asked you of how many houses you had been an inmate you didn't tell us that you had been an inmate of this house where this panel house was run?

Objected to.

Q. Have you been an inmate of any other house than those that I have named?

A. No, sir.

Q. Have you ever been an inmate of a house in Louisville, Kentucky?

A. No, sir.

Q. Now, Miss Clark, do you remember the time Millie Evans called in the officers in Chicago to put you out of her house, do you remember that time?

A. She didn't call in the officers; I told her I was going to leave.

Q. Do you remember the time the officers were in there?

A. Yes, sir.

42 Q. Didn't you make a charge at that time against Millie Evans that she had sent you tickets to come from Cincinnati to Chicago?

A. Well, I had—

Q. Did you or not?

A. Just as——

The COURT: Answer yes or no and explain it.

A. The tickets were to be sent by my fellow to me.

By Mr. LEVY:

Q. Didn't you also say at that time to the officers that you had never been in Chicago before that time?

A. No, sir.

Q. Now, I want to ask you if it is not a fact the time you left Millie Evans now that you stole certain fancy work belonging to Joy Handy?

A. No, sir.

Q. Did you ever steal anything belonging to Joy Handy?

A. No, sir; nothing whatever.

Q. I will ask you if it is not a fact that you stole a fur coat and a pair of shoes when you were an inmate of Emma Harris' house?

A. No, sir.

Q. Weren't you taken by officers at Whity's saloon on George street?

A. I had bought the coat and paid so much down on it.

Q. How about the shoes?

A. About the shoes, one of my heels was broken and one said I could wear them?

Q. Didn't you steal those shoes?

A. No, sir; I did not.

Q. I will ask you if it is not a fact that you told Louise Wilson when she asked you how you happened to come to Cincinnati this last time—if it is not a fact that you told her that you and Grace Parks got on a drunk and you didn't know that you were on your way to Cincinnati until you were half way down here?

A. No, sir.

Q. Didn't you say that to Louise Wilson?

A. No, sir.

Q. Didn't you also say to Joy Handy the way you happened to come to Cincinnati that you and Grace Parks got on a drunk and that you didn't know you were on your way to Cincinnati until you were half way down here?

A. No, sir.

Q. And isn't it the fact that the last time you came to Cincinnati you even left your trunk in Chicago?

43 A. Yes, sir.

Q. Now what is Parks' right name?

A. Neva Parks.

Q. Spell that?

A. N-e-v-a.

Q. She was also known as Grace?

A. Well, Miss Della gave her that name.

Q. She was also known as Grace Parks?

A. No sir; she never was known by that name.

Q. Was she ever an inmate of a house of prostitution also in Chicago?

A. Yes, sir.

Q. In whose house?

A. Mabel Mack.

Q. Mabel Mack, Chicago?

A. Yes, sir.

Q. Was she an inmate of Fanny Wilson's.

A. Yes, sir.

Q. She was an inmate of Fanny Wilson's at the same time that Joy Handy was there, wasn't she?

A. I think she was; I wasn't there at that time.

Q. Wasn't she at that time known as Grace?

A. No, sir.

Q. That is not true?

A. No, sir.

Q. Is it a fact that you took her down to Emma Harris' house and introduced her as Grace?

A. I introduced her by the name she was going by.

Q. Did you introduce her as Grace, did you, or not?

A. Yes, sir.

Q. Now then, the last time you were in Della Bennett's house you were there for how long?

A. I was there about three weeks.

Q. Three weeks or two weeks?

Mr. McPHERSON: She said three weeks.

By Mr. LEVY:

Q. I am asking her the question whether it was—isn't it the fact that you were there only two weeks?

A. Well, I didn't count just how long it was.

Q. Will you please answer me, if as a matter of fact it was only two weeks?

A. About two weeks.

Q. Now then, madam, do you know a man here by the name of Skeeter Jim?

A. Yes; I know him.

Q. And what business is he in?

44 A. Saloon-keeper—bar-tender.

Q. Bar tender where?

A. On Central Avenue.

Q. Was he your man in Cincinnati?

A. He was my friend that is all.

Q. Was he your man in Cincinnati?

A. No, sir.

Q. He was not?

A. No, sir.

Q. Didn't he have anything to do with your coming down here this last time?

A. No, sir.

Q. Was he a good friend of yours the previous time you were in Cincinnati?

A. I just met him the last time I was in Cincinnati.

Q. Isn't it the fact that he ran with you at Della Bennett's house or stayed there all the time?

A. No, sir.

Q. Isn't it a fact madam, that Della Bennett put you out of her house because Skeeter Jim was always up in your room?

A. Only once and that was on my day off.

Q. And isn't it a fact that Della Bennett put you out of her house?

Q. Will you please wait until I finish my question. Now isn't it a fact that Della Bennett put you out of her house because Skeeter Jim was always laying up with you in the room?

A. No, sir.

Q. It is not true?

A. No, sir.

Q. And isn't it the fact that you swore you would get even with her?

A. She had called me names.

Q. Will you please answer me?

A. No.

Q. That is not so?

A. No, sir.

Q. Didn't you testify before the Commissioner that you bawled her out and said you would get even with her?

A. I said she bawled me out and I bawled her right back.

Q. And you would get even with her?

A. No, sir.

Q. Now, from Della Bennett's house where did you go?

A. To Miss Grace Martin's.

45 Q. And how long did you stay at Grace Martin's?

A. I stayed there about a week.

Q. Will you please tell the jury after you left Grace Martin's where you went?

A. I went to Emma Harris'.

Q. And how long did you stay at Emma Harris'?

A. I stayed there about seven weeks.

Q. Do you remember the time when you got a black eye?

Objected to (question read). Objection overruled.

Q. Answer that please?

A. I remember about it.

Q. You at that time, were an inmate of Emma Harris'?

A. Yes, sir.

Q. Who gave you that black eye?

A. A fellow from Chicago, by the name of George Day.

Q. Wasn't it the negro.

A. No; it wasn't.

Q. It wasn't Sam Tweedy, was it?

A. No, it was not.

Q. Now let me ask you whether you did not tell Louise Wilson that it was your lover George from Chicago that gave you the black eye?

Objected to; objection sustained.

Q. Now let me ask you this; while you were an inmate of Emma Harris' isn't it a fact that you were a number of times under the influence of dope—seven or eight times while an inmate in Harris'?

A. No, sir.

Q. When, Mr. Watson, this gentleman here first saw you, didn't you tell him that you came to Cincinnati on your own accord?

A. No, sir; I did not.

Q. Didn't you tell Mr. Watson, this gentleman here, look at him—that you came here of your own initiative?

Objected to.

Q. You did not tell him that?

A. I answered it.

The COURT: She said no.

By Mr. LEVY:

Q. Now, then, did you tell any one that your purpose in coming to Cincinnati was to go on the stage, the vaudeville stage?

A. No, sir.

Q. Didn't you tell anyone that you came here with Grace Parks—Grace could play and dance and you could dance and that was your purpose in coming to Cincinnati?

46 A. Grace and I made that up between us that we would go on the stage.

Q. Then you didn't come down here for the purpose of prostitution, did you?

A. At the time we did; but we meant afterwards to go from there to Toledo on the stage.

Q. Wasn't that your purpose before you came to Cincinnati?

A. No, sir.

Q. It was not your purpose?

A. No, sir.

Q. Before you came to Cincinnati last time in whose house were you an inmate?

Objected to; objection sustained.

Q. At that time you were an inmate of Handy and Brighton's place?

Objected to; objection sustained; exception noted by counsel for defendant.

Q. Didn't you at that time say before you left there that you were coming to Cincinnati and that no one had sent you the tickets, did you say that to Joy Handy?

A. No sir; I never, because she seen all the tickets.

Q. Joy Handy was the Mistress of the house at that time?

A. No, sir.

Q. Before you came to Cincinnati?

A. No, sir.

Q. Didn't Joy Handy run Millie Evans' old place?

A. She did. She said she did; I don't know but I never was there.

Q. You tell this Jury you were not an inmate of Joy Handy's place and you didn't make this statement to Joy Handy?

The COURT: That is what she said.

A. No, sir.

By Mr. LEVY:

— Where is the Alhambra place located in Chicago?

A. Twentieth and State, I think.

Q. What kind of a place is that?

A. I don't know—I never—I was only in it twice.

Q. You were in there twice then you know what kind of a place it is?

A. It is a Hotel.

Q. Occupied by whom?

A. Well, I don't know who runs it.

Q. What's that?

A. I don't know who runs it.

47 Q. With whom were you there?

A. I was there to see a friend of mine who roomed there.

Q. Who was your friend?

A. George Day.

Q. Didn't you tell Joy Handy that you had been going to the Alhambra and visited men who roomed there and with whom you smoked the pipe?

A. No, sir.

Q. Do you remember when you testified before the United States Commissioner at the preliminary hearing that you told the Commissioner that before you came here last October in Cincinnati you had never been to Bennett's house before?

A. I told him I had been there before when they asked me.

Q. But didn't you tell the United States Commissioner at first that you had never been there before?

A. No; not that I know of.

Q. That you weren't there?

A. I never told him that I know of; he never asked me.

Q. Now then this Grace Parks she had never been an inmate of Della Bennett's house before that had she?

A. No, sir.

Q. Did you ask her to come with you?

A. No, sir.

Q. How did she happen to come?

A. I told her I was coming.

Q. And she wanted to come along with you?

A. Yes, sir.

Q. She had never met Della Bennett had she?

A. No, sir.

Q. What do you smoke, Miss Clark?

A. What is it?

Q. What do you smoke?

A. I smoke cigarettes once in a while.

Q. Drink too?

A. Occasionally.

Q. Now, do you recall December the 8th when officers Fox and Green of the Cincinnati Police Force took you out of Whitey Denny's saloon?

A. Yes, sir.

Q. And they took you over to Emma Harris' house?

A. Yes, sir.

48 Q. Didn't you tell officers Fox and Green in the presence of Louise Wilson that it was Emma Harris that sent the tickets that brought you from Chicago to Cincinnati?

A. I never said nothing like that.

Q. You didn't say that?

A. No, sir.

Q. And didn't you also say to officers Fox and Green at that time that Louise Wilson had also sent you the ticket to come to Cincinnati?

A. No, sir; I never said nothing like that.

Q. You didn't say that?

A. No, sir.

Q. Do you know officers Fox and Green?

A. Yes, sir.

Q. The two policemen sitting over there?

A. I know them.

Q. You didn't make that statement to them in the presence of Louise Wilson?

A. I never made that statement to them in the presence of Louise Wilson; no, sir.

Q. And didn't you also say at that time you would get even with Emma Harris and Louise Wilson if you had to lie about it?

A. I never said anything like that; I said I could bring them into trouble for bringing me to Cincinnati.

Q. That you could bring Emma Harris and Louise Wilson into trouble for bringing you to Cincinnati?

A. No; I didn't mention Emma Harris or Louise Wilson; I said I could get them into trouble for bringing me here.

Q. Who told you what that law was?

A. Friend of mine told me, you know what chances you run coming here.

Q. Who was that friend?

A. A friend of mine.

Q. Who was it?

A. A friend of mine by the name of Elmer Mars.

Q. Where is he?

A. I don't know where he is now.

Q. Where was he at the time when he told you?

A. He was in the house.

Q. Elmer Marks?

A. Elmer Mars.

Q. Will you tell me how it is you identify Della Bennett's handwriting?

A. I identify her writing because she asked me to give her some girls names to write to her to come here and I gave them to her; the names of some girls and I sat down and watched her writing.

49 Q. Can you tell her writing from any one else's?

A. Yes, sir.

Q. Is there anything about her writing that makes you identify it?

A. She writes slanting like.

Q. Can you repeat the way she writes or signs her name?

A. No, sir.

By Mr. DARBY: How is that?

Mr. LEVY: Whether she can repeat the way she signs her name. Objected to; objection sustained; exception noted by counsel for defendant.

Q. And when you say that is Della Bennett's handwriting you give that as your opinion?

A. Yes, sir; I know it is her writing.

Q. Could you identify it from any one else's?

A. I could identify anybody else's if they wrote to me and signed their name. I would know whether it was her writing or somebody else's.

Q. Now, then, you testified here this morning, when Mr. Darby shows you one of these letters that on the back of the letter Exhibit 5, that you wrote this on the back yourself, did you so testify?

A. I didn't testify.

Q. Oh, what did you say about it?

A. I said Eva Parks or myself did, I didn't know which.

Q. It was either you or Eva Parks who wrote it?

A. Yes, sir.

Q. Then this writing on the back of the letter, marked Exhibit 5, was written by either you or Eva Parks?

A. Yes, sir.

Q. This now you say that it is your writing?

A. Yes, sir.

Q. And you gave these letters over to the government?

A. No, sir; I gave them an order to go to my trunk.

Q. You gave them an order to go to your trunk and they got it?

A. Yes, sir.

And also WALTER J. WOOD, who being first duly sworn testified as follows:

Direct examination.

50 By Mr. DARBY:

Q. Your name is Walter Wood?

A. Walter J. Wood.

Q. Where do you live?

A. Price Hill.

Q. And what's your occupation?

A. Ticket seller Big Four Railway.

Q. At what office?

A. City ticket office, Fourth and Vine.

Q. In this city?

A. Yes, sir.

Q. Were you employed there last September?

A. I was.

Q. I will show you this paper which has been marked 5 for identification and ask you if you can identify it as having been in your hands before?

A. Yes, sir; I wrote it.

Q. You wrote the body of it?

A. Yes, sir.

Q. And who wrote the name of the Agent?

A. I did.

Q. You wrote that yourself?

A. Yes, sir.

Q. Now, who wrote the name of the depositor?

A. The party who gave me the order.

Q. Can you identify that party?

A. No, sir.

Q. Will you look about and see if you can see the party in the Court Room?

A. I do not know her.

Q. Will you look at the defendant in this case—this woman sitting at the end of the table and state whether that is the woman or can you identify her?

A. I don't remember.

Q. Will you state what occurred in your office as between you and the person who signed the name there as depositor?

Objected to unless the defendant is connected with it.

The COURT: That is so.

Objection overruled; exception noted by counsel for defendant.

By Mr. DARBY:

Q. Just state the whole transaction, just answer the question just what occurred between you and the person who wrote the name Della Bennett at that time?

51 A. It has been so long ago I don't remember exactly; except she asked me to send five tickets to Chicago for five people to come here.

The COURT: A little louder.

A. A party came to the office and they asked me to send five tickets to Chicago; to bring five people here otherwise I don't remember anything about it.

Q. Then did you write the body of that order?

A. Yes, sir.

Q. What did you do with the order?

A. We mailed the original to the agent in Chicago and we gave the depositor a receipt for the deposit and this is the agent's stub.

Q. And this paper is one of the records of your railroad company?

A. Yes, sir.

Mr. DARBY: We offer to read it if your Honor please.

Objected to; objection overruled; exception noted by counsel for defendant.

"Passenger Department."

9-29-19

Agent's Stub.

CHICAGO, ILL.

To A. E. Emerson:

Received from Mr. Della Bennett whose address is 525 George St., City of Cincinnati, O., State of Ohio, the amount indicated below as "Total Value" to pay for 5 1st class ticket- from Chicago to Cincinnati via C. C. C. & St. L. and (\$— dollars in cash to be delivered to Miss Jeanette Clark whose address is 5— W. 21st St., City of Chicago, State of Ill.

Total Value (\$30 and Thirty—30-100 Dollars.)

Remarks —.

Money received on deposit by agent of these lines for tickets and cash to be forwarded on this order is accepted as an accommodation to patrons and such tickets and cash will be furnished as promptly as possible but only with the understanding that the depositor will assume all responsibility for delays or losses incident to transmission by mails or telegraph or other errors of whatever nature.

These lines will use every possible precaution to insure delivery only to the party designated but will not be liable for delivery to wrong party through imposition of any nature.

The above is thoroughly understood and agreed to by depositor who further agrees to pay any difference between amount deposited and traffic fare should it develop later that the agent has through oversight or lack of information collected less than the authorized traffic fare.

(Signed)

GEO. P. PORTER, *Agent.*
DELLA BENNETT, *Depositor.*

Agent making collection will include this order in monthly interline ticket report at total amount collected." And stamped "C. C. C. & St. L. Ry. Sept. 29, 1910, City Office, Cincinnati, O."

Two figures "\$."

We offer this in evidence.

Paper marked by the stenographer "Ex. 10." It is agreed between counsel that copy may be substituted for the original; the same is hereto attached and made part hereof.

Objected to by counsel for defendant and motion made to strike from the record. Objection and motion overruled; exception noted by counsel for defendant.

Cross-examination.

By Mr. LEVY:

Q. You don't know whether the person who signed that paper was a man or a woman do you?

A. I remember it was a woman.

Q. Why didn't you put on there 'Miss Della Bennett instead of Mr. Della Bennett?

A. We just put the first name of the party; the matter is printed in there.

Q. You don't know who that woman was who signed it?

A. No, sir.

Q. And those tickets were bought at Cincinnati, Ohio?

A. Yes, sir.

And also CHARLES OTTO TANGEMAN, who being first duly sworn testified as follows:

Direct examination.

By Mr. DARBY:

Q. Will you give us your full name?

A. Charles Otto Tangeman.

Q. Where do you live Mr. Tangeman?

A. I live in the City.

Q. And your occupation is what?

A. Chief Clerk of the General Passenger Department.

The COURT: Did you say what the Big 4 means?

A. Cleveland, Cincinnati, Chicago & St. Louis Ry., it is known as the Big Four.

53

By Mr. DARBY:

Q. That railway runs between the City of Cincinnati and Chicago, Illinois?

A. Yes, sir; one of the lines.

Q. I will ask you if you can identify this check or order, whatever you may call it?

A. Yes, sir; it is a draft that was issued on my authority in connection with the return—on account of three first class tickets to Cincinnati.

Q. Payable to whose order?

A. It was payable to the order of Miss Della Bennett.

Mr. DARBY: Now, we offer that in evidence, your Honor. The witness this morning identified the signature of the defendant Miss Della Bennett's as being that of this defendant.

Objected to; objection overruled; exception noted.

A. This is a signature—I want to explain it is not my signature, it is the cashier's in the office; it was issued on my order.

Q. You simply brought this paper here from your records?

A. Yes, sir.

Mr. DARBY (reading):

Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.

General Passenger Department.

CINCINNATI, OHIO, Oct. 14, 1910.

To Local Treasurer, The Cleveland, Cincinnati, Chicago & St. Louis R'y Co.:

Pay to the order of Miss Della Bennett, Eighteen and no/100 dollars (\$18.00.) Not valid if drawn for an amount in excess of twenty-five dollars (\$25.00) or to the order of cash the officer signing same or after sixty days from date unless the time limit is extended in writing by the undersigned.

Payable through the First National Bank of Cincinnati, Ohio.

B. S. TANGEMAN, *Cashier.*"

And stamped on the face "C. C. C. & St. L. R'y. Co. Paid Oct. 18, 1910, Local Treasurer" and countersigned by "F. M. Brine, Auditor Passenger Accounts." And in the margin is a red check mark opposite the word "Passenger" below the letters "C. C. C. & St. L." and endorsed on the back "Miss Della Bennett. I. Zacharow."

Mr. LEVY: I ask that that be stricken from the record.
Objection overruled; exception noted.

54 By Mr. DARBY:

Q. Mr. Tangeman, have you any other record about this matter in your possession?

A. I have the file that the Auditor keeps with reference to these matters; there is my original order on the stub, the draft and what leads up to it is in that shape.

Q. You have a record of this being a refunder of three tickets from Chicago to Cincinnati?

A. Yes, sir.

Q. Have you in your office or have you in your possession any records showing the original transaction as to the number of tickets first ordered?

Objected to.

The COURT: Was this in the ordinary course of business?

A. Yes, sir; in the ordinary course of business.

Q. In the railroad?

A. Yes, sir. (Question read.)

Mr. DARBY: On which this refunder was made?

A. I have here the Accounting Department stub which is an impression copy taken at the same time that copy was written.

The COURT: Referring to the paper last spoken of?

A. I refer to this order 7268 Form T. R. D. Form 7268 that is the Agent's stub and this is the department stub.

By Mr. DARBY:

Q. Then that is the original record made in your office of this transaction?

A. No, sir; in the office of the ticket agent at Fourth and Vine. The ticket seller sends this to the Auditor and on that the ticket agent is charged with the collection.

Q. Then it was on that transaction that that refunder was made?

A. In that connection we received a letter.

Q. Will you answer please?

A. Certainly in that connection.

Q. Now you spoke of this paper which I have here and on this Form T. D. R. 7268 headed "Department Stub" and you say that it is an impression copy of this paper which is marked "Agent's Stub?"

A. That is the blank, I presume it was handled as intended; I don't know about that; it seems to be an impression copy rather than a carbon copy.

Q. The Big Four Railroad is engaged in what business as between here and Chicago?

A. Common carrier between here and Chicago.

Q. Common carrier of what?

55 A. Passenger and freight.

Cross-examination.

By Mr. LEVY:

Q. All that you testified to about this transaction and the papers which you have introduced were not made in the presence of the defendant in this case were they?

A. No, sir; I knew no one in connection with it.

Q. You don't know Della Bennett do you?

A. No, indeed.

Plaintiff rests.

The defendant through her counsel moves that the Court instruct the Jury to return a verdict of not guilty against the defendant, on the second count of the indictment, for the reason that the second count of the indictment says that the tickets were procured at Chicago, Illinois; whereas the testimony shows that the tickets were procured if any were procured in the City of Cincinnati.

Motion overruled; exception noted by counsel for defendant.

Counsel for defendant moved that the Court arrest the testimony and instruct the Jury to bring in a verdict of not guilty in the first place, because the law under which the defendant is tried is unconstitutional; secondly, that the testimony in this case shows that tickets were used by one Opal Clark when the entire transaction if any did appear was between the defendant and Jeanette Clark.

Motion overruled; exception noted by counsel for defendant.

Testimony for the Defendant.

And also LOUISE WILSON, who being first duly sworn, testified as follows:

Direct examination by Mr. LEVY:

Q. Please tell the Jury your name?

A. Louise Wilson.

Q. You are now the house-keeper, I believe for Emma Harris?

A. Yes, sir.

Q. Located at 408 George Street?

A. 410.

Q. Miss Wilson in July of 1910 in whose house were you an inmate?

A. Della Bennett's.

56 Q. When did you first make the acquaintance of the woman who has previously been on the stand?

A. The next day after I went there.

Q. Under what name did she go there?

A. Jeanette Clark.

Q. Did she tell you what her name was?

A. No, sir.

Q. How do you know her name was Jeanette Clark?

A. I heard them call her Jeanette.

Q. Was she known by any other name than Jeanette Clark?

A. No, sir.

Q. And how long were you and she together at Bennett's in July?

A. About four or five weeks as well as I remember.

Q. And did she leave before you did?

A. Yes, sir.

Q. Do you know the circumstances under which she left?

A. Yes sir; she got drunk one night.

Objected to by counsel for U. S.

The COURT: It may be stricken out from the record.

Q. When did you next see her this Jeanette Clark?

A. The next time I saw her was in October.

Q. Where did you see her?

A. At Miss Emma Harris' place at 410 George Street.

Q. Did she come there?

A. Yes, sir.

Q. What did she say to you?

Objected to; objection sustained; exception noted by Counsel for defendant.

Q. When did she become an inmate—

The COURT: If she said anything to her about the offense that this defendant is charged with or her connection with it, it would be competent, otherwise not.

Mr. LEVY: I will come to that your Honor.

Q. Do you recall when she became an inmate of Emma Harris' house?

A. On October 22d.

Q. And how long did she stay there?

A. Until December 8th.

Q. Did you ask her how she happened to come to Della Bennett's house?

A. I did.

Q. And what did she say to you about that?

Objected to.

57 Q. Did Jeanette Clark say to you that she and Grace Parks came to the City of Cincinnati the latter part of September or first part of October 1910 voluntarily of their own accord?

A. Yes, sir.

Q. What did she say to you about coming here on tickets?

A. Nothing whatever; she said that she—

Mr. DARBY: Wait a moment—we object to that.

By Mr. LEVY:

Q. Did you ask her how she happened to come to Cincinnati?

A. I did.

Q. What did she say?

Objected to; objection sustained; exception noted by counsel for defendant.

Q. Did Jeanette Clark say to you that she and Grace Parks came to the City of Cincinnati, the last time that she came here, that she did not know she was coming to Cincinnati?

A. Yes, sir.

Q. And they didn't know they were coming to Cincinnati until they were half way to Cincinnati?

A. Yes, sir.

Q. Did she ever at any time, say to you that she and Grace Parks came here by reason of any tickets that were sent to her by Della Bennett?

Objected to. Question read. Objection sustained; exception noted by counsel for defendant. (Counsel for defendant avows that if the witness were permitted to testify she would testify that Jeanette Clark told her that she did not come to Cincinnati from Chicago on tickets that were sent to her by Della Bennett.)

Q. Miss Wilson, have you had anything to do with persons who were addicted to the dope or opium habit?

Objected to.

A. Yes, sir.

Q. And do you know a person when they are under that influence?

A. Yes, sir.

Q. I will ask you to state to the Jury whether or not you ever saw Jeanette Clark under the influence of dope?

Objected to; objection sustained; exception noted by counsel for defendant.

(Counsel for defendant avows if the witness were permitted to answer she would answer in the affirmative.)

58 Q. Please state the number of times you saw Jeanette Clark under the influence of dope?

Objected to; objection sustained; exception noted by counsel for defendant. (Counsel for defendant avows if the witness were permitted to testify she would answer seven or eight times.)

Q. I will ask you to state Miss Wilson from your own knowledge of Louise Wilson, whether or not—

The COURT: You don't mean that.

Mr. LEVY: From your knowledge of her reputation—your personal knowledge—of her personally whether or not you would believe her under oath?

Objected to; objection sustained; exception noted by counsel for defendant.

Q. State to the Jury if you know what the reputation of Jeanette Clark is for truth and veracity if you know what it is?

Objected to; objection sustained; exception noted by counsel for defendant.

(Counsel for defendant avows if the witness were permitted to testify she would answer in the affirmative.)

Q. Do you know what the reputation of Jeanette Clark is in the community where she lives for truth and veracity?

A. Yes, sir.

Q. What is that reputation, good or bad?

—

By Mr. DARBY:

Q. For how long a time do you say you have known Jeanette Clark?

A. I met her in July 1910.

Q. And you were associated with her in a house of Prostitution for how long?

A. At Miss Della Bennett's house four or five weeks to my knowledge.

Q. When did you next become associated with her in a house of prostitution?

A. In October, on October 22d.

Q. And how long did you remain together at that time?

A. Until December the 8th.

Q. How many people dwell in the house of—dwelled in the house of Bennett's when you first met her there?

A. I couldn't say exactly.

Q. About how many?

A. Seven or eight.

Q. And how many dwelled in the Harris house?

A. Five or six to my knowledge.

Q. Both of these places were on George Street?

59 A. Yes, sir.

Q. Down on George Street between Smith and Mound or Smith & John?

A. Smith and Central Avenue.

Q. Between Smith and Central Avenue?

A. Yes, sir.

Q. And your whole acquaintance with her and her reputation is limited to people who lived in those houses and in that immediate neighborhood?

A. Yes, sir.

Q. And opinion and belief you have is not based on opinions of people from any other places than those on Longworth Street?

A. Why yes, I do.

Q. What other places?

A. I know people from other places; there are people who come in those houses that don't live on that street.

Q. And how many people have you talked to with reference to Jeanette Clark's reputation for truth and veracity?

A. Quite a number.

Q. In the house there?

A. Yes, sir.

Q. Well, now, take the community in general for half a dozen blocks around there, do you mean to say you can tell the estimate of people of her off of George Street?

A. Why certainly. They don't have to come directly off of George Street.

Q. Do you know where any of the people live who do know her?

A. No sir; I couldn't say exactly the number of the houses or the name of the street they live in.

Q. You don't know *whether* they do live?

A. No, sir.

Q. Then except what you heard from women and people living in those houses on George Street you don't know anything about her reputation for truth and veracity in that neighborhood?

A. Except from what I heard from other people.

Q. But you don't know where those other people live, or who they are?

A. No sir; I do not; I know their faces but not their names.

By Mr. LEVY:

Q. Please state whether the reputation of Jeanette Clark for truth and veracity is good or bad?

60 A. Bad.

Q. State whether or not her reputation for truth and veracity is such that she can be believed under oath?

A. No sir; she can not.

Q. And Jeanette Clark is the woman who is sitting over there and who testified before?

A. Yes, sir.

Q. Miss Wilson, I will direct your attention to the afternoon of December 8th. You recall her being brought into the Emma Harris house by officers Fox and Green of the Cincinnati Police force?

A. Yes, sir.

Q. State whether or not the Clark woman then said to the officers in your presence that it was Emma Harris who sent her the ticket to come to Cincinnati from Chicago?

A. She certainly did.

Q. And state whether or not she said at that time, that you Louise Wilson also sent her tickets to come to Cincinnati?

A. She did.

Q. State whether or not she said at that time that she would get even though she had to lie about it.

A. She did.

Q. And that statement was made in your presence and in the presence also of—

Objected to; objection sustained.

Q. State whether or not while Jeanette Clark was an inmate of the Harris house whether or not she stole a pair of shoes?

Objected to; objection sustained; exception noted.

(Counsel for defendant avows if the witness were permitted to answer she would answer in the affirmative.)

By Mr. DARBY:

Q. Is Louise Wilson your name?

A. Yes, sir.

Q. How long have you been in this particular line of business?

A. Three years.

Q. How old a woman are you?

A. 29.

Q. What was your business before you entered into this life?

A. I am a stenographer.

Q. In Cincinnati?

A. No, sir.

61 Q. Where was your home?

A. Nashville, Tennessee.

Q. Or you a married or a single woman?

A. Single.

Q. You are now the house-keeper of Emma Harris?

A. Yes, sir.

Q. How long have you been in her employ?

A. Since August.

Q. You were not living at the Bennett house then on the first of October?

A. No, sir.

Q. Or about that time?

A. No, sir.

Q. You first became acquainted with Jeanette Clark as you know her in July 1910?

A. Yes sir; or about that time.

Q. Now, when on this day of December 8th when you say that this woman said that Emma Harris and you had sent her the ticket for her to come to this City; that she was going to lie if necessary to get even with you and Harris—

A. She said she would get even, even if she had to lie with me and Miss Emma.

Q. She would get even with you and Miss Emma even if she had to lie?

A. Yes, sir.

And also, Officer HARRY M. FOX, who being first duly sworn testified as follows:

Direct examination by Mr. LEVY:

Q. Your full name is Harry Fox?

A. Harry M. Fox.

Q. You are a Police Officer of the City of Cincinnati?

A. Yes, sir.

Q. How long have you been such police officer?

A. About six years.

Q. Officer Fox, who was your partner in December, 1910?

A. George W. Green.

Q. And what beat were you patroling in the afternoon of that month?

A. Beat 12.

Q. Describe the boundaries of that beat, will you, please?

A. From Fifth to Seventh, and from Central Avenue to Smith.

62 Q. Will you state to the jury whether or not you and officer Green took this Jeanette Clark out of Whitey's saloon that afternoon and took her to the Emma Harris house?

A. Yes, sir.

Q. What did you take her in there for?

Objected to; objection sustained; exception noted by counsel for defendant.

Q. Will you state whether or not, Jeanette Clark on that occasion said to you and officer Green in the presence of Louise Wilson and Emma Harris that Emma Harris had sent her a ticket to come from Chicago to Cincinnati?

A. Well, she stated that to Emma Harris and this Louise Wilson sent her the tickets to come to Cincinnati from Chicago.

Q. In your presence?

A. Yes, sir.

Q. Did she also state that Louise Wilson had sent her the ticket to come from Chicago to Cincinnati?

A. Yes, sir.

Cross-examination by Mr. DARBY:

Q. And did she also say that she would get even with Emma Harris and Wilson?

A. She said that going down the steps she said she would get even if she had to lie to do it.

And also, Officer GEORGE W. GREEN, who being first duly sworn testified as follows:

Direct examination by Mr. LEVY:

Q. Your full name is George W. Green?

A. George W. Green.

Q. You are a police officer of the City of Cincinnati?

A. Yes, sir.

Q. Were you the partner of officer Harry Fox during December 1910?

A. Yes, sir.

Q. That is, you were patrolling the same beat together?

A. Yes, sir.

Q. Officer Green, I will direct your attention to the afternoon of December 8th, and ask you whether you and officer Fox took the Jeanette Clark woman out of Whitey's saloon on George street and took her to Emma Harris' house?

A. Yes, sir.

63 Q. I will ask you whether or not, Jeanette Clark at that time stated in your presence and in the presence of Officer Fox and in the presence of Louise Wilson that Emma Harris had sent her a ticket to come from Chicago to Cincinnati?

A. Yes, sir.

Q. And that Louise Wilson had sent her a ticket to come from Chicago to Cincinnati?

A. Yes, sir.

Cross-examination waived.

And also JOY HANDY, who being first duly sworn testified as follows:

Direct examination by Mr. LEVY:

Q. Your full name is Joy Handy?

A. Joy Handy.

Q. Who do you live now?

A. 426 George Street.

Q. Whose house is that?

A. Alice Mason.

Q. A house of prostitution?

A. Yes, sir.

Q. How long have you known Jeanette Clark?

A. I have known her ever since she came to Chicago; I can't say exactly but it was about four or five years ago.

Q. Where did you first meet her?

Objected to; objection sustained; exception noted by counsel for

defendant. (Counsel for defendant avows if witness were permitted to testify that she would testify she first met Jeanette Clark in Fanny Wilson's house of prostitution in Chicago more than 5 years ago and that they were sporting together.

Q. Miss Handy in the month of September of 1910 what business were you in?

A. I was running a place at 2017 Armour Avenue, Chicago.

Q. What kind of a place was it?

A. Sporting house.

Q. Was Jeanette Clark an inmate of the house at that time?

A. Yes, sir.

Q. You were the landlady?

A. Yes sir; by the name of Handy & Brighton.

Q. And it was from there that Jeanette Clark came to Cincinnati?

Objected to.

64 A. Yes, sir.

Q. I want you to state whether or not, before the Clark woman left for Cincinnati whether or not she told you she was going to Cincinnati?

A. Well, she said she was thinking of coming back of her own accord, and when I heard they were coming there was something said about Miss Della going to send tickets and I telegraphed to her myself, but never received an answer to my telegram.

Q. Did Jeanette Clark tell you how she came to Cincinnati?

A. She said that she was drunk.

Q. Did she ever say to you that Della Bennett had sent her tickets?

A. No sir; only what I overheard the girl talk about it and then I telegraphed.

Q. Did you ask her whether Della Bennett had sent her any tickets?

Objected to; objection sustained; exception noted.

Q. Now I want you to state to the Jury whether or not you know the reputation of Jeanette Clark?

A. I do.

Q. For truth or veracity?

A. I do.

Q. Is her reputation good or bad?

A. Bad.

Q. Is her reputation such that she can be believed under oath?

A. No sir; you can not.

Q. I want you to state Miss Handy as to whether or not this Jeanette Clark had stolen any of your fancy work?

Objected to; objection sustained. (Counsel for defendant avows if the witness were permitted to testify she would answer in the affirmative.)

Q. I will ask you to state whether or not Jeanette Clark admitted to you that she smoked dope?

Objected to; objection sustained; exception noted by counsel for

defendant. (Counsel for defendant avows if the witness were permitted to testify she would answer in the affirmative.)

Q. I will also ask you to state whether or not Jeanette Clark told you that she was going to the Alhambra Hotel in Chicago and meet men there and smoke dope with them?

Objected to.

A. Yes, sir.

65 Objection sustained. Exception noted by counsel for defendant. (Counsel for defendant avows if the witness were permitted to testify she would answer in the affirmative.)

Q. Do you know a woman by the name of Grace Parks?

A. Yes, sir.

Q. Was she ever known as Eva Parks to your knowledge?

A. Yes, sir.

Q. Where?

Q. 2109 Dearborn street.

Q. What is her right name?

A. Her right name is Neva Parks.

Q. State to the Jury whether or not you know as to whether any one induced and persuaded or enticed Jeanette Clark to come to Cincinnati when she came here the last time?

Objected to.

A. I do not.

Objection sustained; exception noted by counsel for defendant.

Q. State to the Jury whether or not Jeanette Clark told you that any one had induced, enticed, or persuaded her to come to Cincinnati?

A. No.

Cross-examination by Mr. DARBY:

Q. Before you telegraphed to Cincinnati on the occasion that you didn't get any answer to your message you say that the girls there were talking about Della Bennett going to send for them?

A. Well they had told the girls; there was talk about the house and Miss Della didn't know I was running that house.

Q. There was some talking about Della sending for girls?

A. Yes, sir.

Q. Who was it talked about it?

A. Yes, sir.

Q. Who?

A. The other girls.

Q. Who?

A. The girls who boarded there.

Q. Jeanette Clark?

A. She must have talked to the rest of the girls because I telegraphed.

66 Q. Jeanette Clark in your house and in your presence in Chicago, talked about Della Bennett either of sending or going to sending for girls?

A. She didn't talk in my presence but the other girls did and I telegraphed her.

Q. Eva Parks was she one of them?

A. Eva Parks was one of them.

Q. And weren't you talking about coming to Cincinnati at that time?

A. I had my place; no, sir.

Q. Were you talking about coming to Cincinnati at that time?

A. I said when I got rid of the place I was coming, yes.

Q. Did you say you were coming with Jeanette Clark?

A. I did not; no, sir; I couldn't.

Q. Covering what space of time about how many weeks was this talk going on about girls coming to Cincinnati?

A. Jeanette said several times she wanted to come back with her own accord.

Q. Why did she say that to you?

A. Why because we were two to come together.

Q. Well, can you give us any reason why she would say she was coming with her own accord?

A. I don't know why she should go with her own accord because I never went any place I didn't want to go.

Q. She was perfectly at liberty to go where she pleased?

A. Yes, sir.

Q. And you can't give any explanation why she said to you at that time that she was coming with her own accord to Miss Bennett?

A. Jeanette never spoke to me *by* that one time.

Q. The question is: "Can you explain why she used to you the expression that she was going with her own accord if she was under no obligation to stay?"

A. Because she is always trying to get around to get somebody roped in to pay her way.

Q. And that is the way; you thought she was trying to rope some one in to pay her way down?

A. Yes, sir.

Defendant rests.

The above and foregoing was all the evidence offered by either or both of the parties hereto at said hearing.

67 Thereupon the defendants presented the following special charge, separately and in writing and requested the Court to give the same to the Jury. Charges No. 1, No. 2 and No. 8 the Court gave; the charges Nos. 3, 4, 5, 6 and 7, the Court refused to give. The said Special charges are as follows:

No. 1. On the trial of a person accused with crime the law presumes such an accused person to be innocent and that presumption continues to remain until the prosecution proves the guilt of such accused beyond a reasonable doubt.

No. 2. If the Jury are not satisfied from all of the testimony that has been offered that the accused is guilty and find that there are only strong probabilities of guilt, the only safe course is to acquit the defendant.

3. The defendant in this case is charged in the first count of the indictment that she unlawfully and knowingly caused to be transported and aided and assisted in obtaining transportation for and in transporting in interstate commerce to-wit: from the City of Chicago, Illinois, to the City of Cincinnati, Ohio, for the purpose of prostitution two women, to-wit: Opal Clark and Eva Park. If the Jury find from the testimony that the said two women or either of them, to-wit: Opal Clark and Eva Park were not transported for the purpose of prostitution from Chicago to Cincinnati then it is your duty to acquit the defendant on the first count of the indictment.

(The Court refused to give the above special charge to all of which defendant by counsel then and there excepted.)

No. 4. If the Jury find from the testimony that either one of the women, to-wit: Opal Clark or Eva Park were not transported for the purpose of prostitution from Chicago, Illinois, to Cincinnati, Ohio, as is charged against defendant in the first count of the indictment it is your duty to acquit the defendant on said first count of the indictment.

(The Court refused to give the above special charge to all of which defendant by counsel then and there excepted.)

No. 5. The defendant, Della Bennett is charged in the second count of the indictment with unlawfully and knowingly procuring and obtaining and causing to be procured and obtained at the City of Chicago, Illinois, two certain railroad passenger tickets from the Cleveland, Cincinnati, Chicago & St. Louis Railroad Co., which tickets were for the transportation of one person from Chicago, Illinois, to Cincinnati, Ohio, with the purpose and intention that said tickets should be used by two women, to-wit: Opal Clark and Eva Park in going from Chicago, Ill., to Cincinnati, Ohio, for the purpose of prostitution. Before the Jury can convict the defendant you must find from the testimony beyond a reasonable doubt that the defendant unlawfully and knowingly procured and obtained and caused to be procured and obtained the tickets mentioned with the intention that two women, to-wit: Opal Clark and Eva Park should use the same in being transported from Chicago, Ill., to Cincinnati, Ohio, for the purpose of prostitution. If the Jury should not be satisfied beyond a reasonable doubt that such was the intention of the defendant and that both of said women, to-wit: Opal Clark and Eva Park used said tickets with the intention and purpose on the part of Della Bennett that both of said women should use the same for the purpose of prostitution, then it is your duty to acquit the defendant on the second count of the indictment.

No. 6. The defendant is charged in the third count of the Indictment with unlawfully and knowingly persuading, inducing, enticing and caused to be persuaded, induced and enticed two certain women, to-wit: Opal Clark and Eva Park to go from Chicago, Ill.,

to the City of Cincinnati, Ohio, in interstate commerce for the purpose of prostitution and with the purpose and intention on the part of the defendant that each of said women, to-wit: Opal Clark and Eva Park should engage in the acts of prostitution in the City of Cincinnati. If the Jury find from the testimony that the defendant did not persuade, induce and entice or cause to be persuaded, induced and enticed the two women mentioned, to-wit: Opal Clark and Eva Park to come from Chicago, Ill., to the City of Cincinnati, Ohio, for said unlawful purpose it is your duty to acquit the defendant.

Charges 5 and 6 the Court refused to give to all of which defendant by counsel then and there excepted.

No. 7. If the Jury find from the testimony that only one woman was transported or that the defendant was guilty of the acts charged in all three counts of the indictment against one woman who is mentioned in the indictment and not as against both, it is your duty to acquit the defendant under all counts of the indictment.

Which charge the Court refused to give to which action of the Court the defendant, through her counsel then and there
69 excepted.

No. 8. If the Jury find from the testimony that Opal Clark and Eva Park or either of them came to the City of Cincinnati from Chicago for the purpose of prostitution voluntarily without any assistance from the defendant, Della Bennett, that they came here of their own accord and not by reason of any persuasion or inducement which might have been offered by the defendant, Della Bennett it is your duty to acquit the defendant.

The COURT: The General Charge ought to cover No. 1 and the General Charge ought to cover No. 2. No. 3 is the very essence of the offense and in some shape or other it ought to be given. The 4th ought to be given in some shape or other. No. 5 will not be given. I will only give three in substance.

Thereupon Counsel for the Plaintiff and defendants argued the case to the Jury.

During the argument of the District Attorney, Mr. McPherson Counsel for the defendant objected to the following statement: "And any man or woman, although she has lived in a house of prostitution can, sometimes, tell the truth; and when she does tell the truth and when her testimony is corroborated by facts that are undisputed, then her testimony must be believed. But, gentlemen, of the Jury, you must remember in this case, that the witness for the government is no better or worse than most of the witnesses for the defendant, or the defendant. There is no difference.

Mr. LEVY: I wish to except to the statement by counsel that the prosecuting witness is not any worse than the defendant herself.

Mr. McPHERSON: If I have overstepped the bounds I withdraw it in reference to the defendant Bennett.

Thereupon, after argument to the Jury by the respective counsel the Court charged the Jury as follows:

Court's Charge.

GENTLEMEN OF THE JURY:

Your particular attention is directed to the fact that such charges as the United States makes against the defendant, Della Bennett, are those that are contained in the indictment. There are no other charges against her. She is not charged with keeping a house of ill-fame, or fornication, or adultery; or any offense of that kind. She is not on trial for anything of that kind; she is on trial for the offense charged in this indictment, and the government must stand or fall upon the charges contained in this paper—this indictment, and the proof which the government has adduced in support of the indictment.

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The indictment only means that it is the way in which the Government of the United States presents its case. That is all. There should be no presumption against a person because an indictment has been found against that person. If a person is charged with an offense against the laws of the United States he is presumed to be innocent until proved to be guilty beyond a reasonable doubt. I shall refer to this later. Therefore we refer to the indictment and see what it is that the United States charges the defendant with; and, in order, that there may be a clear understanding about it I will read the indictment to the Jury in full:

The District Court of the United States for the Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA,

Western Division of the Southern District of Ohio, ss:

In the District Court of the United States within and for the Western Division of the Southern District of Ohio, in the Sixth Judicial Circuit, of the Term of February, in the Year of Our Lord One Thousand Nine Hundred and Eleven.

1st Count, Sec. 2, Act of June 25, 1910, 36 Stat. 825, "White Slave Traffic Act.

The Grand Jurors of the United States of America duly empaneled, sworn and charged to inquire with and for the Western Division of said District upon their oaths and affirmations present that Della Bennett on or about to-wit: The Twenty-ninth day of September in the year one thousand nine hundred and ten in the County of Hamilton in the State of Ohio in the Western Division of the Southern District of Ohio and within the jurisdiction of this Court did then and there unlawfully and knowingly cause to be transported, and did aid and assist in obtaining transportation for and in transporting in interstate commerce to-wit: from the City of Chicago, in the State of Illinois to and into the City of Cincinnati in the County of Hamilton and State of Ohio and within the Southern Judicial District of said State of Ohio and within the jurisdiction of this Court

two certain women, to-wit: Opal Clark and Eva Parks for the purpose of prostitution, to-wit: for and with the purpose and intention on the part of said Della Bennett that said Opal Clark and Eva Parks and each of them would and should in said City of Cincinnati, State of Ohio engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

71 2d Count, Sec. 2, Act of June 25th, 1910, 36 Stat., 825, "White Slave Traffic Act."

And the Grand Jurors aforesaid upon their oaths and affirmations aforesaid do further present that Della Bennett on or about to-wit: the twenty-ninth day of September in the year one thousand nine hundred and ten in the County of Hamilton in the State of Ohio in the Western Division of the Southern District of Ohio and within and jurisdiction of this Court did then and there unlawfully and knowingly procure and obtain and cause to be procured and obtained at the City of Chicago in the State of Illinois two certain railroad passenger tickets from the Cleveland, Cincinnati, Chicago & St. Louis Railway Company then and there a common carrier of passengers engaged in interstate commerce; each of which said tickets was then and there good for transportation for one person from said City of Chicago in the State of Illinois to the City of Cincinnati, in the State of Ohio upon and over the line and railroad route of said Railway, with the purpose and intention that said tickets should be used by two certain women, to-wit: Opal Clark and Eva Parks in interstate commerce to-wit: in going from said City of Chicago in the State of Illinois to said City of Cincinnati in said State of Ohio for the purpose of prostitution to-wit: for and with the purpose and intention on the part of said Della Bennett that each of said women, to-wit: Opal Clark and Eva Parks would and should in said City of Cincinnati State of Ohio engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain, whereby and with the means and by the use of said tickets said Opal Clark and said Eva Parks were then and there and thereupon carried and transported as passengers in interstate commerce over and upon the railway route and line of said Railway Company, to-wit: from said City of Chicago in the State of Illinois to and into said City of Cincinnati in the State of Ohio and within the Southern Judicial District of said State of Ohio and within the Jurisdiction of this Court for the purpose aforesaid; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

3d Count, Sec. 3, Act of June 25, 1910, 36 Stat. 825, White Slave Traffic Act."

And the Grand Jurors aforesaid upon their oaths and affirmations aforesaid do further present that Della Bennett on or about to-wit: the twenty-ninth day of September, in the year one thousand nine hundred and ten in the County of Hamilton in the State of Ohio in the Western Division of the Southern District of

Ohio and within the jurisdiction of this Court did then and there unlawfully and knowingly persuade, induce, entice and cause to be persuaded, induced and enticed two certain women to-wit: Opal Clark and Eva Parks to go from one place, to-wit: The City of Chicago in the State of Illinois to another place to-wit: the City of Cincinnati in the State of Ohio within the southern judicial district of said state of Ohio and within the jurisdiction of this Court in interstate commerce for the purpose of prostitution, to-wit: for and with the purpose and intention on the part of said Della Bennett that each of said women, to-wit: Opal Clark and Eva Parks would and should in the said City of Cincinnati State of Ohio engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain with the consent of said Opal Clark and Eva Parks; and did then and there and thereby knowingly cause and aid and assist in causing said women, to-wit: Opal Clark and Eva Parks to go and be carried and transported in interstate commerce as passengers upon and over the railway route and line of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company a common carrier engaged in interstate commerce to-wit: from the said City of Chicago in the State of Illinois to and into the said City of Cincinnati in the State of Ohio for the purpose aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America."

I charge you, gentlemen: That this indictment charges three offenses which, if proved by the degree of proof required by the law of the United States, would be an infraction of the laws of the United States, passed by Congress, pursuant to the power granted Congress to regulate Interstate Commerce.

The defendant has pleaded not guilty to the Indictment. Therefore she is presumed to be not guilty until she is proved to be guilty by the testimony in the case beyond a reasonable doubt.

If upon consideration of the testimony in the case you shall have an abiding conviction, amounting to a moral certainty, that she is guilty as charged in these three different charges in the indictment, or any of them, or one of them, then there is no room for the entertainment of a reasonable doubt and your verdict will be guilty.

But, if, on the other hand, if upon the consideration of the testimony in the case you should not have an abiding conviction, amounting to a moral certainty, that she is guilty as charged in the indictment, then your verdict will be not guilty, as you will find for the defendant.

It is not sufficient that you shall think that there is a strong probability of guilt.

The United States in making a criminal charge, and charges of this kind, must prove them beyond a reasonable doubt such as I have endeavored to describe that to you. Therefore, you will inquire carefully into the testimony in order to ascertain whether, or not, the charge has been sustained.

There is evidence tending to show that the woman, Clark, was

directed to do certain things—was directed to do these things which are charged in each one of the counts of the indictment. Now, if you should find that to be true from the testimony, then, I charge you that Opal Clark—with respect to Eva Parks, the other woman whose name is used in this indictment, was an accomplice of the defendant, that is to say one who was accessory to the offence, either before or after the act and was a participant in the offence as charged. If you should find that that was so, then she was an accomplice—and under the definition of that term, gentlemen, I charge you that it is never safe to convict a person charged with a felony upon the uncorroborated testimony of an accomplice—necessarily, if you find that she was an accomplice with respect to these charges or any of them you will necessarily then have to inquire into the facts as to whether or not there is corroborating testimony.

There is evidence tending to corroborate her testimony and it is for you to consider its force and value and the weight to give to it.

It is within the province of the jury to convict upon uncorroborated testimony of an accomplice, but it is the duty of the Court to charge the Jury that if the testimony of an accomplice is not corroborated it is never safe to find the defendant guilty. But if the testimony is corroborated then it is for the Jury to say what weight should be given to it; how far it is corroborated and how strong the corroboration is, in determining the question of the guilt of the defendant.

All three counts of the indictment charge offences against the defendant with respect to two women, Opal Clark and Eva Parks. There was no evidence tending to show that the defendant had anything to do with Eva Parks with respect to inducing her of her own act—the defendant of her own act—inducing the woman Eva Parks, or enticing, or persuading her to come to the City of Cincinnati. I charge you, gentlemen, in that respect, that the averment of the offences charged against the defendant is first: in causing to be transported the two women for the purposes alleged; secondly, of furnishing transportation—of furnishing tickets in the language of the indictment—procuring or obtaining any ticket, or tickets, or any form of transportation; and thirdly, inducing or persuading or enticing them to come. I may say in that connection, that if it should appear from the testimony; that if you should be of opinion from the testimony, that only one of these women is concerned with any of the offences charged against this defendant, that that would be sufficient to maintain the claim of the government; that is to say it is not necessary it should be proved beyond a reasonable doubt that the defendant was guilty of each one of these offences charged in the indictment with respect to the two, if you judge from the testimony that one of the women was the subject of what the defendant did with respect to what is charged in all of the offences charged in the indictment, or with respect to only one, or only two of them. There is evidence tending to show that the witness, Opal Clark—by her own evidence, went at some time by another name. And that neither of the names, either that of Opal Clark, or the other name Jeanette Clark was her right name, but it was something else—

Jeanette Laplante or Laplace; but I charge you in that respect, gentlemen, that if you are satisfied from the evidence that Opal Clark, charged in the indictment was one of the women concerned, and Jeanette Clark, or Jeanette Laplante or Laplace are one and the same person, that the indictment is sufficiently explicit upon that point.

The facts are for the jury's determination, and the Jury are to consider every fact and circumstance in the case in order to reach a proper conclusion.

You must weigh the testimony, and weigh it carefully in order that you may reach the truth, so far as it is possible in any case to reach the truth; but you must endeavor to do so; and it is your province to give as much credence to the witnesses as you please. You are entitled to reject the testimony of any witness altogether, or you may reject a part of it; you may believe a part of the testimony of a witness and reject the rest of the testimony of a witness, and you are to judge of the weight of the evidence. You are to take into consideration all of the circumstances; who the witnesses are, and what their conduct in life is; what their manner on the stand was,

75 what their manner of testifying is, and bearing in mind, at all times, that any one is presumed to tell the truth. We know they don't always tell the truth—people don't always tell the truth. There may be sometimes reasons and motives that they have which influence them when they are testifying and they may not tell the truth, yet that presumption must be borne in mind that they do.

If you can find that any motives, in your judgment, operate upon the mind of a witness in such a way as to cause you to believe that her testimony is untruthful, then you are to give weight to such a motive. If you are unable to find any motive operating upon the mind of any witness you are not to bother your mind with the question of motive in determining whether he or she is telling the truth or not.

It undoubtedly is true that people of immoral conduct may nevertheless tell the truth, and yet on the other hand judging of the credibility of a witness you are to bear in mind her life and circumstances—all of the circumstances surrounding her and to determine the probability of her telling the truth or not. And when you have weighed all the testimony of all the witnesses you will come to such conclusions as are justified by the testimony in the case under the rules I have given to you.

You will retire to the jury room and return a verdict according to the law and the evidence.

Mr. LEVY: I want to reserve an exception to your Honor's charge to the jury where you said that there was evidence tending to corroborate the testimony of Clark; and I want to except to that portion of your Honor's charge where you speak about the uncorroborated testimony of an accomplice; and I want to except to that portion of your Honor's charge, that if the jury find that only one woman was transported; and I want to except to your Honor's charge in which you say that if the jury find that Jeanette Clark, or Jeanette Laplante is one and the same person, that is sufficient.

Also a general exception to the charge of your Honor.

Thereupon the Jury retired and upon due deliberation returned a verdict, as appears of record herein.

Thereupon within three days, defendant, through her counsel, filed a motion for a new trial, which motion, upon consideration, the Court overruled, to all of which defendants, by counsel then and there excepted.

And now comes defendant, and presents this her Bill of Exceptions, and prays that the same may be allowed, signed, sealed, settled and made a part of the record herein, all of which is accordingly done this 21st day of March 1911.

76

HOWARD C. HOLLISTER,
*Judge of the United States District Court,
Southern District of Ohio, Western Division.*

(Ex. 1.)

(Envelope.)

CINCINNATI, O., July 27—1 A. M., 1910.

Miss Jeanette Clark, No. 5 W. 21st St., Chicago, Ill. Flat 2.

(Ex. 2.)

(Letter.)

CINCINNATI, O., July 28th. '10.

DEAR JEANETTE: I will answer your most welcome letter which I received the other day. I am ashamed for not answering sooner but I have been so busy. I am not mad at you at all. I have no reason to be mad at you. you never did anything to me at all. I wish you would come back home it is so lonesome here without you your friends come in all the time and ask for you. now Jeanette come back soon be here for the Exposition will you. I know business will be good here then the girls all send their love to you. I have a lot of new girls but all nice ones. Now be sure and come back soon and bring some girls with you. mr. Z is back and looks fine he sends his best to you. I will close. Inez and I are going to Chester Park tonight answer soon and tell me when you are coming. I have all your clothes in my room. good by love from all.

Your friend,

DELLA.

Give Joy my best, tell her to write.

(Ex. 3.)

(Envelope.)

CINCINNATI, O., Aug. 4—1 A. M., 1910.

Miss Jeanette Clark, No. 5 W. 21st St., Chicago, Ill. Flat 2.

(Ex. 3-A.)

(Letter.)

CINCINNATI, O., Aug. 3d, 1910.

DEAR JEANETTE: I just received your card and we are all well and hope this letter will find you the same well Jeanette I wish you would hurry and come back we are all lonesome to see you. frouse was in the other night and gave me 50c for you to have a drink when you come back. Now come soon will you.

(Ex. 3-b.)

bring another girl with you or more if you can. Idabelle has been sick but is feeling better now, now Jeanette be sure and come back soon. I will close hoping to hear from you soon, now make up your mind to come back soon I will close good by your friend.

Miss DELLA BENNETT,

525 George St.

Come back soon.

77

(Ex. 4.)

(Envelope.)

CINCINNATI, O., Aug. 11, 1 A. M., 1910.

Miss Jeanette Clark, No. 5 W. 21st St., Chicago, Ill., Flat 2.

(Ex. 4-A.)

(Letter.)

CINCINNATI, O., Aug. 10th, '10.

DEAR FRIEND JEANETTE: Just received your letter the other day, well why don't you come back to Cin. we are lonesome for you, business is very good now. Idabelle is well and sends her best regards to you. the weather is fine here. frouse was in last night and went up stairs with Louise. Mr. — is well and wants you to come back. now when you come bring some girls with you. as I will need lots of girls for the fair. the fair starts 1 week from next Monday. So be sure and come next week sure. Will you now Jeanette

don't disappoint me will you be sure and come next week sure. I will close hoping to here from you at once.

Your friend,

DELLA. Good bye.

(Ex. 5.)

(Letter.)

CINCINNATI, O., Aug. 24th, 1910.

DEAR JEANETTE: I will answer your letter I received a few days ago. I am very sorrow you are sick. And hope by the time this letter reaches you that you will be well and ready to come back to Cincy.

The Exposition opens Monday and business is fine now. Jeanette, I only have 7 girls so try and come and bring some girls with you. If you don't want to come for good just come for the Exposition as things are getting fine now, now Jeanette do me this favor and come.

(Ex. 5-A.)

and help me out will you. I will send tickets for as many girls as you can bring with you. I will not write very much this time but you be sure and come will you. If you will come and help me out I will get you a nice present. Mr. — sends his love to you and also all the girls. now please come will you. I will close. your true friend.

Miss DELLA BENNETT,
525 George St.

be sure and send me a telegram at once and I will send as many tickets as you need.

78

(Ex. 7.)

(Western Union Telegram Blank.)

Miss Jeanette Clark, No. 5 W. 21st St., Chicago, Ill.:

SEPT. 27.

Answer will I send ticket to you or not. Cincinnati.

DELLA BENNETT,
525 George St.

(Ex. 8.)

(Western Union Telegram Blank.)

CINCINNATI.

Miss Jeanette Clark, No. 5 W. 21st St., Chicago, Ill.:

5 tickets are on way send telegram when you leave. Please rush this.

DELLA BENNETT,
525 George St.

(Ex. 9.)

(Western Union Telegram Blank.)

9-29.

To Jeanette Clark, No. 5 W. 21st St., Chicago, Ill.:

5 tickets at 12th St. Station, leave there Friday to get here Saturday.

DELLA BENNETT.

(Ex. 10)

Form T. D. R.

No. 7268.

The Cleveland, Cincinnati, Chicago & St. Louis Railway Company. New York Central. Lines Cincinnati Northern R. R.

Passenger Department.

Agent's Stub,

9-29-1910.

To A. E. Emerson, Chicago, Ill.:

Received from Mr. Della Bennett whose address is 525 George St., City of Cincinnati, O., State of Ohio the amount indicated below as "Total Value" to pay for 5 1st class tickets from Chicago to Cincinnati via C. C. C. & St. L. and (\$—) dollars in cash to be delivered to Miss Jeanette Clark whose address is 5 W. 21st St., City of Chicago, State of Illinois.

Total value (\$30) Thirty—30-100 Dollars.

Remarks: Money received on deposit by Agents of these Lines for tickets and cash to be furnished on this order is accepted as an accommodation to patrons, and such tickets and cash will be furnished as promptly as possible, but only with the understanding that the depositor will assume all responsibility for delays or losses incident to transmission by mails or telegraph, or other errors of whatever nature. These lines will use every possible precaution to insure delivery, only to the party designated, but will not be liable for delivery to wrong party through imposition of any nature. The above is thoroughly understood and agreed to by depositor who

79 further agrees to pay any difference between amount deposited and Tariff fare, should it develop later that the Agent has through oversight or lack of information collected less than the authorized Tariff fare.

GEORGE P. PORTER, Agent.
DELLA BENNETT, Depositor.

Agent making collection will include this order in monthly Interline ticket report at total amount collected.

R. R.

Form No. — furnished on this order.

C. C. C. & St. L. R. R.

Sept. 29, 1910, 4

City Office, Cincinnati, O.,

Not good for Passage on Trains.

Not to be Exchanged for Ticket.

(Ex. 11.)

C. E. B. New Form 2453

Distribution New York Central Lines

C. C. C. & St. L. Passenger No. 34302

Audited: F. M. Brine The Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.

Auditor Passenger
Accounts.

General Passenger Department.

CINCINNATI, OHIO, Oct. 14, 1910.

To Local Treasurer, The Cleveland, Cincinnati, Chicago & St. Louis
R'y Co.:

Pay to the order of Miss Della Bennett Eighteen and no-100 dollars \$18.00.

Not valid if drawn for an amount in excess of twenty-five dollars (\$25) or to the order of cash, the officer signing same or after sixty days from date, unless the time limit is extended in writing by the undersigned.

Payable through the First National Bank of Cincinnati, Ohio.
B. S. TANGEMAN, *Cashier*.

(No Protest.) (Stamp)

C. C. C. & St. L. Ry. Co.

Paid Oct. 18, 1910, Local Treasurer.

(Indorsements:) Miss Della Bennett, I. Zacharow. (Stamp)
First National Bank, Paid Cincinnati, Ohio.*Petition for Writ of Error.*

And afterwards, to-wit: on the 22nd day of March, A. D. 1911, the following Petition for Writ of Error was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

80 United States District Court, Southern District of Ohio, Western Division.

No. 797.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

DELLA BENNETT, Defendant.

Petition for a Writ of Error.

And now comes Della Bennett, defendant herein, and says that on or about the 23rd day of February, 1911, this Court entered judgment.

ment of conviction herein against said defendant, in which judgment and the proceedings had prior thereunto in this cause, certain errors were committed, to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

Wherefore this defendant prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Sixth Judicial Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

MAX LEVY,
Attorney for Defendant.

Assignment of Errors.

And afterwards, to-wit: on the same day, the following Assignment of Errors was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 797.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
DELLA BENNETT, Defendant.

Assignment of Error.

Now comes Della Bennett, the defendant, by Max Levy, her attorney, and says that in the records and proceedings aforesaid there is manifest error, in this, to-wit:

First.

The Court erred in overruling the motion to quash the indictment, as appears of record herein, and to which counsel for defendant then and there excepted.

Second.

The Court erred in overruling the demurrer, filed by the defendants herein, to which ruling counsel for defendant then and there excepted, as appears of record herein.

81

Third.

The Court erred in refusing to grant the motion of the defendant before the impaneling of the jury, that the United States of America be required to elect on which count of the indictment it would try the defendant, to which ruling the defendant, through her counsel, then and there excepted.

Fourth.

The Court erred in permitting the envelope, marked "Exhibit No. 1," and first sheet of letter, marked "Exhibit No. 2" and the second sheet of letter, marked "Exhibit No. 2a" and the third sheet of letter, marked "Exhibit No. 2b," as appears on pages 15 and 16 of the bill of exceptions, and in overruling defendant's objection thereto, to which ruling counsel for defendant then and there excepted, as appears of record herein.

Fifth.

The Court erred in overruling the motion of the defendant to strike the letter, marked "Exhibit- No. 1," No. 2, No. 2a and 2 b" from the record, as found on page 15 of the bill of exceptions to which ruling of the Court the defendant then and there excepted.

Sixth.

The Court erred in permitting the envelope, marked "Exhibit No. 3" and the letter, first page of which is marked "Exhibit No. 3a," and second page marked "Exhibit No. 3b," as appears on pages 17 and 18 of the bill of exceptions, and in overruling defendant's objection to the introduction of the same, to which ruling, counsel for defendant then and there excepted, as appears of record herein.

Seventh.

The Court erred in overruling the motion of the defendant to strike the letter marked "Exhibit- No. 4, No. 4 a and No. 4b" from the record, as appears on page 20 of the bill of exceptions, and to which ruling of the Court counsel for defendant then and there excepted, as appears of record herein.

Eighth.

The Court erred in permitting the letter marked "Exhibit No. 5 and Exhibit No. 5a" to be read in evidence, and in overruling defendant's objection thereto, and to which ruling counsel for defendant then and there excepted, as appears of record herein on pages 20 and 21 of the bill of exceptions.

82

Ninth.

The Court erred in permitting the witness, Opal Clark, to answer the following question as appears on page 24 of the bill of exceptions:

"What did you tell her in that letter?" and in overruling defendant's objection thereto, and to which ruling counsel for defendant then and there excepted, as appears of record herein.

Tenth.

The Court erred in permitting the witness, Opal Clark, to answer the following question, as appears on the bottom of page 24 of the bill of exceptions:

"What did you say in that letter?" and in overruling defendant's objection thereto, and to which ruling counsel for defendant then and there excepted, as appears of record herein.

Eleventh.

The Court erred in permitting the witness, Opal Clark, to answer the following question, as appears on page 28 of the bill of exceptions:

"State whether or not any consideration was paid to you for receiving men, as you have described, at the house of Della Bennett, after you arrived at Cincinnati?" and in overruling defendant's objection thereto, to which ruling counsel for defendant then and there excepted, as appears of record herein.

Twelfth.

The Court erred in permitting the witness, Opal Clark, to answer the following question, as appears on page 29 of the bill of exceptions:

"Now, what, if any, conversation did you have with Miss Bennett after your arrival here with reference to sending of tickets to Chicago?" and in overruling defendant's exception thereto, to which counsel for defendant then and there excepted, as appears of record herein.

Thirteenth.

The Court erred in refusing the following question to be asked the witness, Opal Clark, on cross-examination, as appears on page 41 of the bill of exceptions:

"Didn't you tell Louise Wilson that this George was sent to the penitentiary for violating the age of consent law of two little girls?" and to which ruling of the Court, counsel for defendant then and there excepted, as appears of record herein.

Fourteenth.

The Court erred in permitting the witness, Opal Clark, to answer the following question, as appears on page 49 of the bill of exceptions:

83 "Just read the message you have to yourself, and then just state whether you received such a message in Chicago?" and in overruling defendant's objection thereto, to which counsel for defendant then and there excepted, as appears of record herein.

Fifteenth.

The Court erred in overruling the motion of the defendant that the telegram, marked "Exhibit No. 7," as appears at the bottom of page 49, and top of page 50 of the bill of exceptions, be stricken from the record, to which ruling of the Court counsel for defendant then and there excepted, as appears of record herein.

Sixteenth.

The Court erred in permitting the telegram, marked "Exhibit No. 8" to be read in evidence over the objection of the defendant, as appears at the bottom of page 50, and the top of page 51 of the bill of exceptions, to which ruling counsel for defendant then and there excepted.

Seventeenth.

The Court erred in permitting the telegram, marked "Exhibit No. 9" to be read in evidence, as appears on page 51 of the bill of exceptions, over the objection of the defendant, and to which counsel for defendant then and there excepted, as appears of record herein.

Eighteenth.

The Court erred in overruling the motion of the defendant to have the telegram, marked "Exhibit No. 9" stricken from the record, and to which ruling counsel for defendant then and there excepted, as appears of record herein.

Nineteenth.

The Court erred in permitting the witness, Walter J. Wood, to answer the following question:

"Will you state what occurred in your office as between you and the person who signed the name there as depositor?" over the objection of the defendant, and to which counsel for defendant then and there excepted, as appears on page 68 of the bill of exceptions.

Twentieth.

The Court erred in permitting the document, marked "Exhibit No. 10" to be read, as appears on pages 69 and 70 and 71 of the bill of exceptions, and in overruling defendant's objection thereto, and to which counsel for defendant then and there excepted, as appears on page 71 of the bill of exceptions.

Twenty-first.

84 The Court erred in overruling the motion of the defendant to strike from the record "Exhibit No. 10," as appears on page 71 of the bill of exceptions, to which counsel for defendant then and there excepted.

Twenty-second.

The Court erred in permitting the document to be read in evidence, as found on pages 73 and 74 of the bill of exceptions, and in overruling defendant's objection thereto, to which counsel for defendant then and there excepted.

Twenty-third.

The Court erred in overruling the motion of the defendant to strike said document from the record, as appears on page 74 of the

bill of exceptions, to which ruling, counsel for defendant then and there excepted, as appears of record herein.

Twenty-fourth.

The Court erred in overruling the motion of the defendant, at the conclusion of the testimony of the plaintiff, to instruct the jury to return a verdict of not guilty against her on the second count of the indictment, and to which ruling counsel for defendant then and there excepted, as is found on page 76 of the bill of exceptions.

Twenty-fifth.

The Court erred in overruling the motion of counsel for defendant at the conclusion of the testimony of plaintiff, to instruct the jury to bring in the verdict of not guilty, for the following reasons:

(1) Because the law under which the defendant was tried was unconstitutional;

(2) Because the testimony in the case showed that the tickets were used by one Opal Clark, when the entire transaction, if any, occurred, was between the defendant and Jeanette Clark.

to which ruling counsel for defendant then and there excepted as appears on page 77 of the bill of exceptions.

Twenty-sixth.

The Court erred in refusing the following question to be asked the witness, Louise Wilson, as appears on page 81 of the bill of exceptions:

"Did she ever, at any time, say to you that she (meaning Jeanette Clark) and Grace Parks came here by reason of any tickets that were sent to her by Della Bennett?" and to which ruling, counsel for defendant then and there excepted, and counsel for defendant then and there avowed that if the witness were permitted to testify, she would testify that Jeanette Clark told her that she didn't come to Cincinnati from Chicago on tickets that were sent to her by Della Bennett.

Twenty-seventh.

The Court erred in refusing the following question to be asked the witness, Louise Wilson, as appears on page 81 of the bill of exceptions:

"I will ask you to state to the jury whether or not you ever saw Jeanette Clark under the influence of dope?" and to which ruling, counsel for defendant then and there excepted, and avowed that if the witness were permitted to answer, she would answer in the affirmative.

Twenty-eighth.

The Court erred in refusing the following question to be asked the witness, Louise Wilson, as appears on page 82 of the bill of exceptions:

"Please state the number of times you saw Jeanette Clark under

the influence of dope," and to which ruling counsel for defendant then and there excepted, and avowed that if the witness were permitted to testify, she would answer "Seven or eight times."

Twenty-ninth.

The Court erred in refusing the following question to be asked the witness, Louise Wilson, as found on page 86 of the bill of exceptions:

"State whether or not, while Jeanette Clark was an inmate of the Harris home, whether or not she stole a pair of shoes?" to which ruling, counsel for defendant then and there excepted and avowed that if the witness were permitted to answer, she would answer in the affirmative.

Thirtieth.

The Court erred in refusing the following question to be asked the witness, Joy Handy, as appears on page 94 of the bill of exceptions:

"I want you to state, Miss Handy, as to whether or not this Jeanette Clark had stolen any of your fancy work?" to which ruling, counsel for defendant then and there excepted and avowed that if the witness were permitted to answer, she would answer in the affirmative.

Thirty-first.

The Court erred in refusing the following question to be put to the witness, Joy Handy, as appears on page 94 of the bill of exceptions:

"I will ask you to state whether or not Jeanette Clark admitted to you that she smoked dope?" to which ruling, counsel for defendant then and there excepted and avowed that if the witness were permitted to testify, she would answer in the affirmative.

86

Thirty-second.

The Court erred in refusing the following question to be asked the witness, Joy Handy, as appears on page 94 of the bill of exceptions:

"I will ask you to state whether or not Jeanette Clark told you that she was going to the Alhambra Hotel in Chicago and meet men there and smoke dope with them?" to which ruling of the Court, counsel for defendant then and there excepted, and avowed that if the witness were permitted to testify, she would answer in the affirmative.

Thirty-third.

The Court erred in refusing to give to the jury, at the request of the defendant, the following special charge No. 3:

"The defendant in this case is charged in the first count of the indictment, that she unlawfully and knowingly caused to be transported, and aided and assisted in obtaining transportation for and in transporting in interstate commerce, to-wit, from the City of Chicago, Illinois, to the City of Cincinnati, Ohio, for the purpose of prostitution, two women, to-wit, Opal Clark and Eva Park. If the jury find from the testimony that the said two women, or either of

them, to-wit, Opal Clark and Eva Park, were not transported for the purpose of prostitution from Chicago to Cincinnati, then it is your duty to acquit the defendant on the first count of the indictment."

To the refusal of the Court in giving the above special charge No. 3, counsel for defendant then and there excepted, as appears on page 99 of the bill of exceptions.

Thirty-fourth.

The Court erred in refusing to give special charge No. 4 to the jury, as requested by counsel for defendant, as follows:

"If the jury find from the testimony that either one of the women, to-wit, Opal Clark or Eva Park, were not transported for the purpose of prostitution from Chicago, Illinois, to Cincinnati, Ohio, as is charged against the defendant in the first count of the indictment, it is your duty to acquit the defendant on said first count of the indictment."

To the refusal of the Court in giving the said special charge No. 4, counsel for defendant then and there excepted, as appears on page 99 of the bill of exceptions.

Thirty-fifth.

The Court erred in refusing to give special charge No. 6 to the jury, as requested by counsel for defendant, as follows:

87 "The defendant is charged in the third count of the indictment with unlawfully and knowingly persuading, inducing, enticing, and caused to be persuaded, induced and enticed two certain women, to-wit, Opal Clark and Eva Park, to go from Chicago Ill., to the City of Cincinnati, Ohio, in interstate commerce for the purpose of prostitution, and with the purpose and intention on the part of the defendant that each of said women, to-wit, Opal Clark and Eva Park, should engage in the acts of prostitution in the City of Cincinnati. If the jury find from the testimony that the defendant did not persuade, induce and entice, or cause to be persuaded, induced and enticed the two women mentioned, to-wit, Opal Clark and Eva Park, to come from Chicago, Ill., to the City of Cincinnati, Ohio, for said unlawful purpose, it is your duty to acquit the defendant."

To the refusal of the Court to give said special charge No. 6 to the jury, as requested, counsel for defendant then and there excepted, as appears of record.

Thirty-sixth.

The Court erred in refusing to give special charge No. 7, as requested by counsel for defendant, as follows:

"If the jury find from the testimony that only one woman was transported, or that the defendant was guilty of the acts charged in all three counts of the indictment against one woman who is mentioned in the indictment and not against both, it is your duty to acquit the defendant under all counts of the indictment."

To the refusal of the Court to give said special charge No. 7, as

requested, counsel for defendant then and there excepted, as appears of record.

Thirty-seventh.

Mis-conduct on the part of the District Attorney in using the following language to the jury in his argument, to which language counsel for defendant then and there excepted, as appears on page 102 of the bill of exceptions:

"And any man, or woman, although she has lived in a house of prostitution, can sometimes tell the truth; and when she does tell the truth and when her testimony is corroborated by facts that are undisputed, then her testimony must be believed, but, gentlemen of the jury, you must remember in this case that the witness for the government is no better or worse than most of the witnesses for the defendant, or the defendant. There is no difference."

Thirty-eighth.

The Court erred in charging the jury in its general charge, as follows:

88 "There is evidence tending to corroborate her testimony, and it is for you to consider its force and value and the weight to give it."

To which charge, counsel for defendant excepted in the presence of the jury, as appears of record herein.

Thirty-ninth.

The Court erred in charging the jury in its general charge, as follows:

"It is within the province of the jury to convict upon uncorroborated testimony of an accomplice, but it is the duty of the Court to charge the jury if the testimony of an accomplice is not corroborated, it is never safe to find the defendant guilty. But if the testimony is corroborated, then it is for the jury to say what weight should be given to it; how far it is corroborated and how strong the corroboration is, in determining the question of the guilt of the defendant."

To which charge, counsel for defendant excepted in the presence of the jury, as appears of record herein.

Fortieth.

The Court erred in its general charge to the jury, as follows:

"All three counts of the indictment charge offenses against the defendant with respect to two women, Opal Clark and Eva Park. There is no evidence tending to show that the defendant had anything to do with Eva Park with respect to inducing her of her own act—the defendant of her own act—inducing the woman Eva Park, or enticing, or persuading her to come to the City of Cincinnati, Ohio. I charge you, gentlemen, in that respect that the gravamen of the offenses charged against the defendant is, first, in causing to be transported women for the purposes alleged; secondly, of furnishing transportation—furnishing tickets in the language of the indictment—procuring or obtaining any ticket or tickets, or any form of

transportation, and thirdly, inducing, persuading or enticing them to come. If you shall be of the opinion with respect to carrying these two women from Chicago to Cincinnati,—I may say in that connection, that if it should appear from the testimony that only one of these women is concerned with any of the offenses charged against this defendant, that that would be sufficient to maintain the claim of the government that is to say, it is not necessary it should be proved beyond a reasonable doubt that the defendant was guilty of each one of these offenses charged in the indictment with respect to the two. If you judge from the testimony that one of the
89 women was the subject of what the defendant did with respect to what is charged in all of the offenses charged in the indictment, or with respect to only one, or only two of them, * * *

To which portion of the charge, counsel for defendant excepted in the presence of the jury.

Forty-first.

The Court erred in its general charge to the jury, as follows:

"There is evidence tending to show that the witness Opal Clark, by her own evidence, went sometime by another name, and that neither of the names, either that of Opal Clark, or the other name Jeanette Clark was her right name, but it was something else, Jeanette Laplant or Laplace; but I charge you in that respect, gentlemen, that if you are satisfied from the evidence that Opal Clark charged in the indictment was one of the women concerned, and Jeanette Clark, or Jeanette Laplant, or Laplace, are one and the same person, that the indictment is sufficiently explicit upon that point."

Counsel for defendant excepted to that portion of the Court's charge, herein mentioned, in the presence of the jury.

Forty-second.

The Court erred in overruling the motion in arrest of judgment, to which the defendant excepted, as appears of record herein.

Forty-third.

The verdict and judgment rendered herein is contrary to law.

Forty-fourth.

The verdict and judgment rendered herein is contrary to the law and not sustained by the evidence.

Forty-fifth.

The verdict does not establish the guilt of the defendant beyond a reasonable doubt.

Forty-sixth.

For other reasons apparent upon the face of the record.

Wherefore, defendant prays that said judgment of the District Court may be reversed.

Attorney for Defendant.

Entry, 10—340.

And afterwards, to-wit: on the same day, an Entry was made upon the Journal of said Court in said cause, which said
90 Entry is clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
DELLA BENNETT, Defendant.

Entry Allowing Writ of Error.

This 22nd day of March, 1911, came Della Bennett, defendant herein, by her attorney, and filed herein and presented to the Court her petition, praying for the allowance of a writ of error, an assignment of errors intended to be urged by her, praying, also, that a transcript of the record and the proceedings and papers, upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Sixth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the Writ of Error upon the defendant giving bond, according to law, in the sum of Three Thousand (\$3,000.00) Dollars, which shall operate as a supersedeas bond.

Præcipe.

And afterwards, to-wit: on the same day, the following Præcipe was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

United States District Court, Southern District of Ohio, Western Division.

No. 797.

THE UNITED STATES OF AMERICA
vs.
DELLA BENNETT.

To B. E. Dilley, Clerk of said Court:

Please prepare a certified copy of the record and proceedings in the above entitled cause to be filed in the Circuit Court of Appeals on proceedings in error.

MAX LEVY,
Attorney for Defendant.

Bond on Writ of Error.

And afterwards, to-wit, on the same day, the following Bond on Writ of Error was filed in the Clerk's Office of said Court clothed in the words and figures following, to-wit:

91 District Court of the United States, Southern District of Ohio,
Western Division, ss:

No. 797.

THE UNITED STATES OF AMERICA
VS.
DELLA BENNETT.

Know all men by these presents:

That we Della Bennett, as principal, and Hattie Fuller and J. T. Patterson as sureties, are held and firmly bound unto The United States of America in the sum of Three Thousand (3,000) Dollars, to be paid to the said The United States of America.

To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this 25th day of March, 1911. Whereas, the above named Della Bennett has taken out a Writ of Error to the Circuit Court of Appeals of the United States for the Sixth Circuit to reverse the judgment in the above entitled action by the District Court of the United States, for the Southern District of Ohio.

Now, therefore, the condition of this obligation is such, that if the above named Della Bennett shall prosecute her said Writ to effect and shall abide the judgment of the said Circuit Court of Appeals of the United States then this obligation to be void; otherwise to remain in full force and virtue.

DELLA BENNETT. [SEAL.]
HATTIE FULLER. [SEAL.]
J. T. PATTERSON. [SEAL.]

Sealed and delivered in presence of
HARRY F. RABE.
MAX LEVY.

The above security is approved.

HOWARD C. HOLLISTER,
District Judge of the United States, S. D. Ohio.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Hattie Fuller one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Ten Thousand (\$10,000.00) Dollars in real estate in my own name; situate in the County of Hamilton in said District.

HATTIE FULLER.

Sworn to before me the 25th day of March, 1911.

[SEAL.]

HARRY F. RABE,
Deputy Clerk U. S. District Court, S. D. O.

92 SOUTHERN DISTRICT OF OHIO:

I, John T. Patterson one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth Six Thousand (\$6,000.00) Dollars in real estate in my own name, situate in the County of Hamilton in said District.

J. T. PATTERSON.

Sworn to before me the 25th day of March, 1911.

[SEAL.]

HARRY F. RABE,

Deputy Clerk U. S. District Court, S. D. O.

United States District Court, Southern District of Ohio, Western Division.

No. 797.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

DELLA BENNETT, Defendant.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, B. E. Dilley, Clerk of the Court aforesaid, do hereby certify that the foregoing is a true, correct and complete Transcript of the Record and Proceedings had by and before the said Court, in the above entitled cause, as the same appear of record and on file in the Clerk's Office of said Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Cincinnati, Ohio, this 20th day of April, A. D., 1911.

[SEAL.]

B. E. DILLEY, Clerk,

By HARRY F. RABE, Deputy.

Writ of Error.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

The President of the United States to the Honorable the Judge of the District Court of the United States for the Southern District of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between The United States of America and Della Bennett a manifest error hath happened, to the great

93 damage of the said Della Bennett as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Sixth

Circuit, together with this writ, so that you have the same at Cincinnati, in said Circuit, on the* 24th day of April next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the 25th day of March, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States of America the one hundred and thirty-fifth.

B. E. DILLEY,

*Clerk of the District Court of the United
States for the Southern District of Ohio.*

Allowed by

HOWARD C. HOLLISTER,

*Judge of the District Court of the United States
for the Southern District of Ohio.*

* Not exceeding 30 days from the day of signing the citation.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said Circuit, on the* 24th day of April next, pursuant to a Writ of Error, filed in the Clerk's Office of the District Court of the United States for the Southern District of Ohio, wherein Della Bennett is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 25th day of March, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States of America the one hundred and thirty-fifth.

HOWARD C. HOLLISTER,

*Judge of the District Court of the United States
for the Southern District of Ohio.*

* Not exceeding 30 days from the day of signing.

Service of the within citation is hereby acknowledged, and appearance entered on behalf of the United States of America, the 27th day of March, 1911.

SHERMAN T. MCPHERSON,

*United States Attorney in and for the
Southern District of Ohio.*

And afterwards towit on May 2 1911, præcipe for appearance of counsel was filed in said cause which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2178.

DELLA BENNETT

vs.

THE U. S. OF AMERICA.

Frank O. Loveland, Clerk of said Court:

Please enter my appearance as counsel for the plaintiff in error.

MAX LEVY.

And afterwards towit: on February 13, 1912, an entry was made upon the Journal of said Court in said cause clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2177.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN

vs.

UNITED STATES OF AMERICA,

and

#2178.

DELLA BENNETT

vs.

UNITED STATES OF AMERICA.

Before Warrington, Knappen and Denison, C. JJ.

These causes are argued together by Mr. Max Levy for the plaintiffs in error and are continued until tomorrow for further argument.

And afterwards towit on February 14, 1912, an entry was made upon the Journal of said Court in said causes which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2177.

EMMA HARRIS, alias EMMA R. SMITH, and BESSIE GREEN

VS.

UNITED STATES OF AMERICA,

and

#2178.

DELLA BENNETT

VS.

UNITED STATES OF AMERICA.

These causes are further argued by Mr. Max Levy for the plaintiffs in error and by Mr. Thomas L. Darby, Assistant United States Attorney, for the defendant in error and are submitted to the Court.

And afterwards towit on March 5 1912, judgment was entered in this cause clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

#2178.

DELLA BENNETT

VS.

UNITED STATES OF AMERICA.

Error to the District Court of the United States for the Southern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Ohio and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be and the same is hereby affirmed.

And on the same day, towit March 5 1912, an opinion was filed in said cause which reads and is as follows:

Opinion.

Filed Mar. 5, 1912. Frank O. Loveland, Clerk.

United States Circuit Court of Appeals, Sixth Circuit.

No. 2178.

DELLA BENNETT, Plaintiff in Error,

vs.

UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Southern
District of Ohio.

Submitted February 14, 1912.

Decided March —, 1912.

Before Warrington, Knappen and Denison, Circuit Judges.

Respondent was, upon her plea of not guilty, convicted of violating the Act of June 25, 1910, commonly known as the "White Slave Act." The testimony indicated that she was the keeper of a house of prostitution in Cincinnati; that in the summer of 1910, a former inmate of her house, then known to her by the name of Jeanette Clark, was in a similar house in Chicago; that respondent sent to Jeanette Clark several letters and telegrams asking her to return and bring other girls with her; that finally respondent sent railroad tickets for this purpose, and Jeanette Clark and Eva Parks used the tickets to come from Chicago to Cincinnati, and entered and remained in the Bennett house. The errors assigned are upon the constitutionality of the law and upon some questions of evidence.

DENISON, *Circuit Judge* (after stating the facts as above):

It is clear that the power of congress to pass this statute must be found in its power to regulate commerce. The arguments of counsel for plaintiff in error, as we understand them, are that commodities only, and not persons, can be the subject of commerce; that persons cannot be prohibited from traveling from one state to another because of some intention they may have; that the woman herself is not by this act forbidden to travel, and it cannot be a criminal act to aid an unforbidden act; and that the law is an invasion of the police powers of the states.

It cannot now be doubted that transportation, of persons as well as of property, is commerce, and that congress may regulate the interstate transportation of persons (*Gloucester Ferry Co. vs. Pennsylvania*, 114 U. S. 196, 203; *Covington Bridge Co. vs. Kentucky*, 154 U. S. 204, 217; see also the cases involving passenger traffic under the Interstate Commerce Acts.)

It is also settled that the constitutional power to regulate includes

the power to prohibit, in cases where such prohibition is in aid of the lawful protection of the public. (*The Lottery Case*, 188 U. S. 321, 354).

We think it a mistake to assume that this statute does not prohibit, and so impliedly permits, the primary act and yet punishes as a crime a merely incidental wrong. The act does not undertake to prohibit the woman from traveling from one state to another of her own volition, and in the supposed exercise of her inherent personal rights, no matter what her purpose as to her future conduct may be. This conclusion is emphasized by observing that the woman traveling may be perfectly innocent of any intended immorality, and that the act cannot be intended to interfere with liberty of travel by such person. The primary thing forbidden is the inducing of a person to come into the state, with unlawful purpose by the inducer and in aid of such unlawful purpose, but without direct regard to the innate character or purpose of the person induced. It is this primary thing and for incidental transportation by the carrier, which are forbidden and penalized.

We do not find in the statute either the purpose or the effect to interfere with the police powers of the state. The law is directed only against the inducing or performing of interstate transportation; and this entire subject-matter is obviously not within the scope of the police power of any state; hence, its exercise cannot be an invasion of such power. It may well be assumed that the laws of all states prohibit, as those of Ohio do, the various ultimate acts of immorality referred to in this statute, and it follows that the law in question is in aid of the complete and effective exercise by the states of their respective police powers; and is of the same class as many acts of congress in recent years having the same general purpose (see enumeration of such acts in *U. S. vs. Hoke*, 187 Fed. Rep., 992, 1000, 1003).

We conclude that the act is not open to the constitutional objections presented.

Respondent urges that while she was indicted for causing the interstate transportation of Opal Clark, and it was not alleged that Opal Clark had, in fact or by repute, any other name, the evidence showed the transportation of a woman who was known to respondent as Jeanette Clark, and whose real name was wholly different. This is said to be a variance between allegation and proof; and we are cited to cases in text books and reports to the effect that the indictment should contain the true name of the individual affected by the criminal act. It is not necessary to review these cases. Some of them were decided under stricter rules of pleading than this court has applied. The essential things involved are that the record should be in such shape as to protect the respondent against a second prosecution for what is really the same offense, and as fairly to inform respondent of the crime intended to be alleged. These considerations involve the question of the identity of the person named—either actual identity or identity as supposed by respondent. Whatever obstacles, if any, there might be in afterwards interpreting and applying the record of indictment and judgment by parol testimony,

as must be and is done with reference to civil judgments, we find in this case that the bill of exceptions is now a part of the record as much as is the indictment or the judgment, and that by the whole record there clearly appears the entire identity of the person named in the indictment with the person whom respondent must have known to be the one intended to be named and with the person who was actually transported. This leaves no possible ground for prejudice resulting from the double variance between the name used in the indictment and the name known to respondent and the real name.

Respondent further urges that while the indictment charges the transporting of two persons for the purpose stated, the proof wholly failed as to one of them. This also amounts to a claim of variance between allegation and proof. If we accept the claim that the proof did so fail, still we would not think the variance fatal. The violation of the statute is complete if one person is transported, and the fact that two persons are named in the same count instead of basing a separate count upon the travel of each person should not be fatal to a conviction. It is true that where two persons are named as the subject of the defense, and it is proved as to one of them only, there is a seeming variance, but it is really a failure of proof as to a thing which it was not necessary to allege. The only points here, which are of substance and not of form, are, as with reference to the last matter discussed, the question of misleading the respondent and the question of protection against a future prosecution. It is clear that respondent would not be misled unless there were two occasions so as to give rise to some ambiguity, and no such thing here appears. It is true also that as to the person concerning whom the proof failed, the record would show a conviction which was insofar really unauthorized, but the protection against a future prosecution would be just as perfect, and it cannot be presumed that the action of the trial court, in possession of all the facts, would be prejudicially affected in the matter of sentence. In these respects, the case is within the rule that a general conviction and sentence upon several counts will not be disturbed because all but one of the counts are bad, provided the good counts supports the sentence (*Claassen vs. U. S.*, 142 U. S. 140, 146; *Hardesty vs. U. S.*, C. C. A. 6, 168 Fed. Rep. 25, 26).

The judgment will be affirmed.

And afterwards towit on March 18, 1912, a petition for writ of error was filed which reads and is as follows:

Supreme Court of the United States.

No. —.

DELLA BENNETT, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Petition for Writ of Error.

Your petitioner, Della Bennett, plaintiff in error in the above entitled cause, respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Sixth Circuit, No. 2178, and that a judgment has therein been rendered on the 5th day of March, 1912, affirming a judgment of the District Court of the United States for the Southern District of Ohio, Western Division.

That the jurisdiction of none of the courts above mentioned is or was depending in anywise upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of the different states; that the constitutionality of a Federal Statute is involved in this cause and that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error; and therefore your petitioner would respectfully pray that a writ of error be allowed her in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit to send the record and proceedings in said cause with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said plaintiff in error may be reviewed, and if error be found, corrected according to the laws and customs of the United States, and for a stay of proceedings and for a stay of execution.

DELLA BENNETT,

Plaintiff in Error,

By MAX LEVY,

Her Attorney.

The foregoing petition is granted, and a writ of error allowed, as prayed for.

HORACE H. LURTON,

Justice United States Supreme Court.

Mch. 12/1912.

And on the same day, to wit on March 18, 1912, an assignment of errors was filed in said cause which reads and is as follows:

Supreme Court of the United States.

No. —.

DELLA BENNETT, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Assignment of Errors.

And now comes the plaintiff in error, Della Bennett, and says that in the record and proceedings aforesaid in the United States Circuit Court of Appeals for the Sixth Circuit, No. 2178, in the above entitled cause, and in the rendition of the judgment therein, manifest error has intervened to the prejudice of said plaintiff in error, in this towit:

First. Said Circuit Court of Appeals erred in entering judgment affirming the judgment of the District Court of the United States for the Southern District of Ohio, Western Division, in favor of said defendant in error, and against said plaintiff in error.

Second. Said Circuit Court of Appeals erred in not reversing the said judgment of the United States District Court aforesaid, and in not remanding said cause to said District Court for a new trial.

Third. Said Circuit Court of Appeals erred in not sustaining the second assignment of error upon the record in said cause.

Fourth. Said Circuit Court of Appeals erred in overruling the twenty-fourth assignment of error upon the record in said cause.

Fifth. Said Circuit Court of Appeals erred in not sustaining the twenty-fifth assignment of error upon the record in said cause.

Sixth. Said Circuit Court of Appeals erred in not sustaining the thirty-third assignment of error upon the record in said cause.

Seventh. Said Circuit Court of Appeals erred in not sustaining the thirty-fourth assignment of error upon the record in said cause.

Eighth. Said Circuit Court of Appeals erred in not sustaining the thirty-fifth assignment of error upon the record in said cause.

Ninth. Said Circuit Court of Appeals erred in not sustaining the thirty-sixth assignment of error upon the record in said cause.

Tenth. Said Circuit Court of Appeals erred in not sustaining the forty-second assignment of error upon the record in said cause.

Eleventh. Said Circuit Court of Appeals erred in rendering judgment against the plaintiff in error and in favor of defendant in error.

Wherefore, the said Della Bennett, plaintiff in error, prays that for the errors aforesaid, and other errors appearing in the record of the said United States Circuit Court of Appeals, in the above entitled cause, to the prejudice of the plaintiff in error, the said judgment of the said United States Circuit Court of Appeals be reversed, annulled, and for naught esteemed, and that said cause be remanded to the United States District Court for the Southern District, with instructions to grant a new trial in said cause, or for such further

proceedings in said cause as may be determined upon by this Honorable Court, to the end that justice may be done in the premises.

MAX LEVY,
Attorney for Plaintiff in Error.

And on the same day, towit, March 18, 1912, bond was filed in said cause clothed in the words and figures as follows:

Know all men by these presents, That we, Della Bennett, as principal, and Maryland Casualty Company, as sureties, are held and firmly bound unto The United States of America in the full and just sum of Three Hundred dollars, to be paid to the said The United States of America, its certain attorney, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 13th day of March, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a session of the United States Circuit Court of Appeals, 6th Circuit, in a suit depending in said Court, between Della Bennett, Plaintiff in error, and The United States of America Defendant in error, a judgment was rendered against the said Della Bennett, and the said Della Bennett having obtained a writ of error, and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Della Bennett shall prosecute her writ to effect and answer all costs if she shall fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

DELLA BENNETT. [SEAL.]
MARYLAND CASUALTY CO.
W. H. SARGENT, [SEAL.]
Att'y in Fact.

Sealed and delivered.
MAX LEVY,
AGNES B. GRANT.

Approved by
HORACE H. LURTON,
*Associate Justice of the Supreme Court
of the United States.*

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, B. E. Dilley, Clerk of the District Court of the United States, within and for the District and Division aforesaid, do hereby certify that, in my opinion, the within bond of Della Bennett, with the Maryland Casualty Company, as surety, is sufficient.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 13th day of March, A. D., 1912.

[SEAL.]

B. E. DILLEY, *Clerk*,
By HARRY F. RABE, *Deputy*.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals, before you, or some of you, between Della Bennett, plaintiff in error, and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 12th day of March, in the year of our Lord one thousand nine hundred and twelve.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed, to operate as a supersedeas and the plaintiff in error may be admitted to bail, upon filing the citation duly served, by the District Court, upon the execution of a bond in said Court conditioned as required by law in the sum of the bond under which she is now on bail.

HORACE H. LURTON,
*Associate Justice of the Supreme
Court of the United States.*

[Endorsed:] Filed Mar. 18, 1912. Frank O. Loveland, Clerk.

United States Circuit Court of Appeals for the Sixth Circuit, ss:

In pursuance of the command of the within writ of error, I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby transmit under the seal of said Court, a true, full and complete copy of the record and proceedings in said Court in the cause and matter in said writ of error stated; together with all things concerning the same, to the Supreme Court of the United States, together with said writ of error and the citation to said defendant in error.

Witness my official signature and the seal of said Court at Cincinnati, Ohio, in said Circuit, this 19th day of March, 1912.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
*Clerk United States Circuit Court of
Appeals for the Sixth Circuit.*

UNITED STATES OF AMERICA, ss:

To The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the United States Circuit Court of Appeals for the Sixth Circuit, wherein Della Bennett is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Horace H. Lurton, Associate Justice of the Supreme Court of the United States, this 12th day of March, in the year of our Lord one thousand nine hundred and twelve.

HORACE H. LURTON,
*Associate Justice of the Supreme
Court of the United States.*

MARCH 18th 1912.

I hereby acknowledge service of a true copy of the within citation.

SHERMAN T. MCPHERSON,
United States Attorney, S. D., O.

United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of Della Bennett vs. The United States of America, No. 2178, as the

same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof, together with the original writ of error and citation.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 19th day of March A. D. 1912.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,

*Clerk of the United States Circuit Court of
Appeals for the Sixth Circuit.*

[16833]

112 Supreme Court of the United States, October Term, 1911.

No. 1068.

DELLA BENNETT, Plaintiff in Error,
VS.

THE UNITED STATES OF AMERICA.

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Sixth Circuit, and of the argument of counsel thereupon had, as well in support of as against the same, it is now here ordered by the Court that the said petition be, and the same is hereby, granted, and that the transcript of record heretofore filed be taken as a return to the writ.

May 13, 1912.

Endorsed on cover: File No. 23,144. U. S. Circuit Court Appeals, 6th Circuit. Term No. 603. Della Bennett, Plaintiff in Error, vs. the United States of America. Filed April 1st, 1912. File No. 23,144.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

EMMA HARRIS, ALIAS EMMA R. SMITH,
AND BESSIE GREEN, PLAINTIFFS IN
ERROR,

v.

THE UNITED STATES.

} 112.

DELLA BENNETT, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

} No. 603.

ON WRITS OF ERROR AND WRITS OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

MOTION TO ADVANCE.

The Solicitor General, on behalf of the United States, moves the court to advance these cases for hearing during the present term with Nos. 381 and 588, in which cases like motions are submitted.

All are criminal cases, arising under the act of Congress approved June 25, 1910, 36 Stat. 825, known as the White Slave Traffic Act, and all involve the constitutionality of that act.

In these cases, Nos. 602 and 603, plaintiffs in error were convicted in the District Court for the Southern

District of Ohio of violating the statute. Harris was sentenced to a term of four years in the penitentiary, Green to a term of one year in the penitentiary, and Bennett to a term of eleven months in jail, and to pay the costs of prosecution.

The trial court overruled motions and demurrers which challenged the constitutionality of the act as not being a regulation of interstate commerce, and therefore not within the power of Congress to enact. Upon appeal to the Circuit Court of Appeals the validity of the statute was sustained. The cases are before this court upon writs of error and also upon writs of certiorari granted at the last term.

Notice of this motion has been given.

WILLIAM MARSHALL BULLITT,

Solicitor General.

WILLIAM R. HARR,

Assistant Attorney General.

OCTOBER 15, 1912.



4
Office Supreme Court, U. S.
FILED.

APR 10 1912

JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. ~~1007~~. 602

**EMMA HARRIS, ALIAS EMMA R. SMITH, ET
AL., PLAINTIFFS IN ERROR AND PETITIONERS,**

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI.

MAX LEVY,
Counsel for Petitioners.

(23,143)

THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 1067.

EMMA R. SMITH AND BESSIE GREEN,
PETITIONERS,

VS.

THE UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

*To the Honorable the Chief Justice and Associate
Justices of the Supreme Court of the United
States:*

Your petitioners, Emma R. Smith and Bessie Green, respectfully represent that on the 9th day of February, 1911, they were indicted in the District Court of the United States within and for the Southern District of Ohio, Western Division, for a violation of section 2 of the act of June 25, 1910, 36th Stat., 825, known as "The White Slave Traffic Act," and also for a violation of section 3

that the said case may be reviewed and determined by this court as provided in section 6 of the act of Congress entitled "An act to establish Circuit Courts of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioners may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said act, and that the mandate of said Circuit Court of Appeals affirming the judgment of the district court be stayed, and for a stay of proceedings, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this honorable court.

And your petitioners will ever pray.

MAX LEVY,

Counsel.

STATE OF OHIO,

County of Hamilton, ss:

Max Levy, being duly sworn, says that he is counsel for Emma R. Smith and Bessie Green, the petitioners; that he prepared the foregoing petition, and that the allegations thereof are true as he verily believes.

MAX LEVY.

Subscribed and sworn to before me by Max Levy this the 8th day of March, 1912.

[SEAL.]

W. W. SYMMES,

Notary Public, Hamilton County, Ohio.

My commission expires March 27, 1913.

"Exhibit A."

Indictment. No. 798.

THE UNITED STATES OF AMERICA

vs.

EMMA HARRIS, ALIAS EMMA R. SMITH, AND BESSIE
GREEN.

Be it remembered, that on the ninth day of February, in the year of our Lord one thousand nine hundred and eleven, came the grand jurors of the United States within and for the district and division aforesaid, and presented to the court their certain bill of indictment against the defendants herein, which said bill of indictment is clothed in the words and figures following, to wit:

Indictment.

THE UNITED STATES OF AMERICA,

Western Division of the

Southern District of Ohio, ss:

In the District Court of the United States within and for the Western Division of the Southern District of Ohio, in the Sixth Judicial Circuit, of the Term of February, in the Year of Our Lord One Thousand Nine Hundred and Eleven.

1st Count—Sec. 2, Act of June 25, 1910, 36 Stat., 825, "White-Slave Traffic Act."

The grand jurors of the United States of America, duly empaneled, sworn and charged to inquire within and for the western division of said district, upon their oaths and affirmations, present

that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to wit, the eighth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the circuit and western division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly cause to be transported, and did aid and assist in obtaining transportation for and in transporting in interstate commerce, to wit, from the city of Charleston, in the State of West Virginia, to and into the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, two certain women, to wit, Nellie Stover and Stella Larkins, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them; that each of said Nellie Stover and Stella Larkins, would and should in said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit, and indiscriminate sexual intercourse with men for hire and gain, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

2d Count—Sec. 2, Act of June 25, 1910, 36 Stat., 825, "White-Slave Traffic Act."

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to wit, the eighth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the

State of Ohio, in the circuit and western division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly procure and obtain, and cause to be procured and obtained, at the city of Charleston, in the State of West Virginia, two certain railroad passenger tickets from the Chesapeake & Ohio Railway Company, then and there a common carrier of passengers, engaged in interstate commerce, each of which said tickets was good for transportation for one person from said city of Charleston, West Virginia, to the city of Cincinnati, in the State of Ohio, upon and over the line and railroad route of the said railway company, with the purpose and intention that said tickets should be used by two certain women, to wit, Nellie Stover and Stella Larkins, in interstate commerce, to wit, in going from said city of Charleston, in the State of West Virginia, to said city of Cincinnati, in said State of Ohio, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them, that each of said women, to wit, Nellie Stover and Stella Larkins, would and should, in said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain, whereby, and with the means and by the use of the said tickets, said Nellie Stover and Stella Larkins were then and there and thereupon carried and transported as passengers in interstate commerce, over and upon the railway route and line of said railway company, to wit, from said city of Charleston, in the State of West Virginia, to and into said city of Cincinnati, in the State of Ohio, and within the southern judicial

district of said State of Ohio, and within the jurisdiction of this court, for the purposes aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

3d Count—Sec. 3, Act of June 25, 1910, 36 Stat., 825, "White-Slave Traffic Act."

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to wit, the eighth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the circuit and western division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly persuade, induce, entice, and cause to be persuaded, induced, and enticed, two certain women, to wit, Nellie Stover and Stella Larkins, to go from one place, to wit, the city of Charleston, in the State of West Virginia, to another place, to wit, the city of Cincinnati, in the State of Ohio, within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, in interstate commerce, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them, that each of said women, to wit, Nellie Stover and Stella Larkins, would and should in the said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain, with the consent of the said Nellie Stover and Stella Larkins; and did then and there and thereby

knowingly cause and aid and assist in causing said women, to wit, Nellie Stover and Stella Larkins, to go and be carried and transported in interstate commerce, as passengers upon and over the railway route and line of the Chesapeake & Ohio Railway Company, a common carrier engaged in interstate commerce, to wit, from the said city of Charleston, in the State of West Virginia, to and into the said city of Cincinnati, in the State of Ohio, for the purpose aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SHERMAN T. MCPHERSON,
*United States Attorney in and for
 the Southern District of Ohio.*

The following endorsement appears on the back of said indictment: "A true bill. Wm. H. Davis, foreman."

[Endorsed:] File No. 23,143. Supreme Court U. S., October Term, 1911. Term No. 1067. Emma Harris, alias Emma R. Smith, *et al.*, pl'ffs in error, *vs.* The United States of America. Petition for writ of *certiorari*. Filed April 10, 1912.

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FILED

APR 10 1912

JAMES H. MCKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. ~~1000~~. 6()3

DELLA BENNETT, PLAINTIFF IN ERROR AND
PETITIONER,

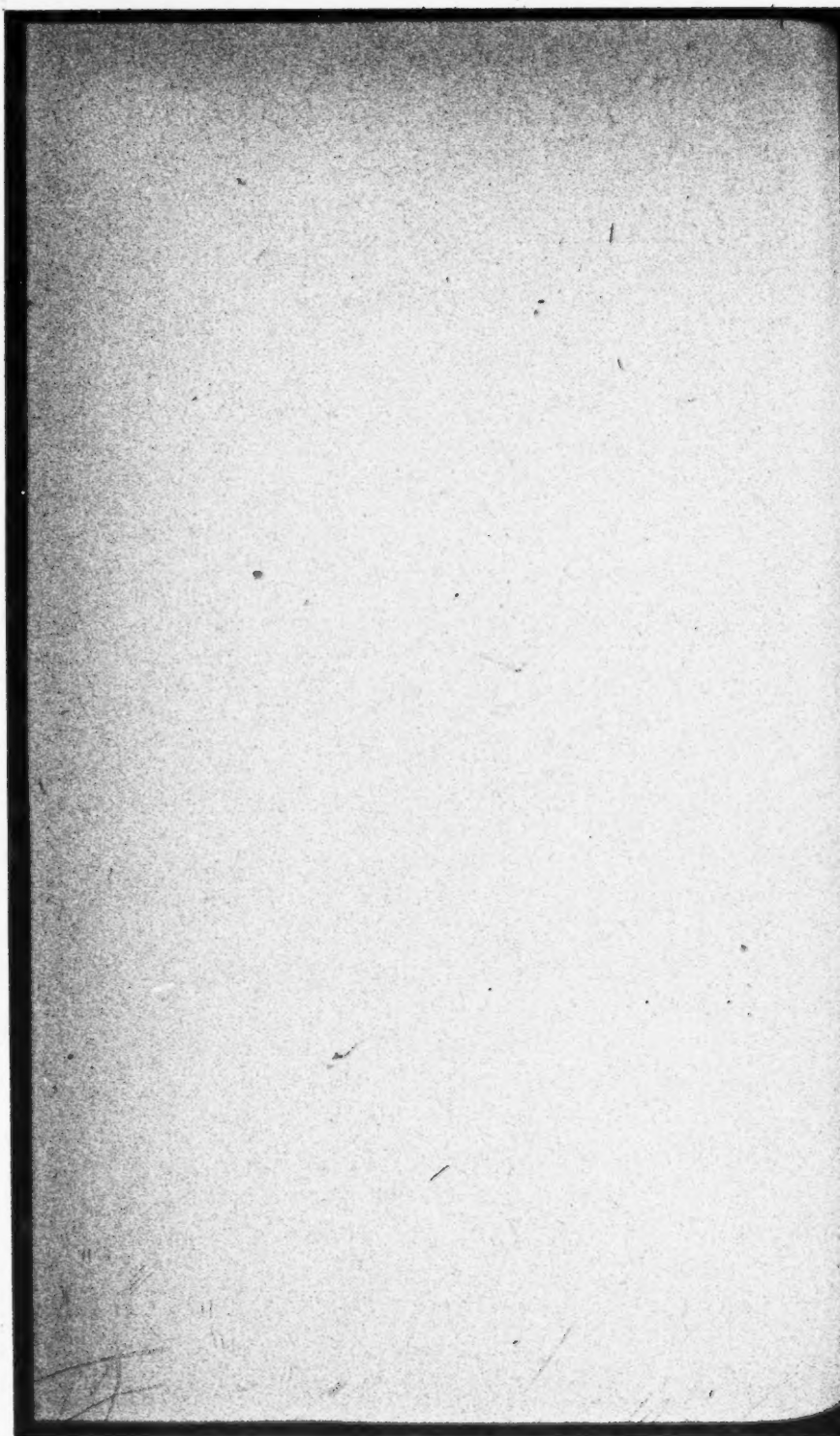
vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI.

MAX LEVY,
Counsel for Petitioner.

(23,144)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 1068.

DELLA BENNETT, PETITIONER,

vs.

**THE UNITED STATES OF AMERICA,
RESPONDENT.**

PETITION FOR WRIT OF CERTIORARI.

*To the Honorables the Chief Justice and Associate
Justices of the Supreme Court of the United
States:*

Your petitioner, Della Bennett, respectfully represents that on the 9th day of February, 1911, she was indicted in the District Court of the United States within and for the Southern District of Ohio, Western Division, for a violation of section 2 of the act of June 25, 1910, 36 Stat., 825, known as "The White Slave Traffic Act," and also for a violation of section 3 of said act, in that she was charged with transporting, causing to be transported, and persuading, inducing, and en-

ting, and causing to be persuaded, induced, and enticed, Opal Clark and Eva Parks to come from the city of Chicago, Illinois, to the city of Cincinnati, Ohio, in interstate commerce for the purpose of prostitution, and with the purpose and intention on the part of the petitioner that the said Opal Clark and Eva Parks would and should, in the city of Cincinnati, Ohio, engage in the acts and practice of offering and submitting their bodies to common, illicit, and indiscriminate sexual intercourse with men for hire and gain, a copy of which indictment is hereto attached, marked "Exhibit A," and made part hereof.

That a demurrer was filed to said indictment in which the constitutionality of the statute aforesaid was raised. That said demurrer was overruled by the district court.

That thereupon a plea of "not guilty" was entered by the petitioner, and that upon the trial had the petitioner was convicted and sentenced to eleven months' imprisonment.

The testimony upon the hearing of the case showed that the true and correct name of Opal Clark was Nellie Laplante, and there was a total failure of proof as to the guilt of the petitioner as to Eva Parks.

A motion was made at the conclusion of the testimony for an instructed verdict of acquittal on the ground that the white slave traffic law was unconstitutional, and for the further reason of variance between the allegations and proof as

to the name of the Clark woman, and for failure of proof as to the guilt of petitioner as to Eva Parks, all of which motions were overruled by the trial court.

That thereupon a writ of error was sued out in the Circuit Court of Appeals in and for the Sixth Circuit, and the constitutionality of said act was questioned in the said Circuit Court of Appeals; that on the 5th of March, 1912, the said Circuit Court of Appeals rendered an opinion sustaining the constitutionality of said law and overruling all other questions raised, and affirmed the judgment of the district court.

Your petitioner believes that the aforesaid judgment of the Circuit Court of Appeals is erroneous and that this honorable court should require the said case to be certified to it for review and determination in conformity with the provisions of the act of Congress in such cases made and provided.

Wherefore your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding the said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein, entitled Della Bennett, plaintiff in error, *vs.* The United States of America, defendant in error, No. 2178,

to the end that the said case may be reviewed and determined by this court as provided in section 6 of the act of Congress entitled "An act to establish Circuit Courts of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said act, and that the mandate of said circuit court be stayed, and for a stay of proceedings, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this honorable court.

And your petitioner will ever pray.

MAX LEVY, *Counsel.*

STATE OF OHIO,

County of Hamilton, ss:

Max Levy, being duly sworn, says that he is counsel for Della Bennett, the petitioner; that he prepared the foregoing petition; and that the allegations thereof are true as he verily believes.

MAX LEVY.

Subscribed and sworn to before me by Max Levy this the 8th day of March, 1912.

My commission expires March 27, 1913.

[Notarial Seal, Hamilton County, Ohio.]

W. W. SYMMES,

Notary Public, Hamilton County, Ohio.

"Exhibit A."

Criminal. No. 797.

THE UNITED STATES OF AMERICA
vs.
DELLA BENNETT.

Indictment.

Be it remembered that on the 9th day of February, in the year of our Lord one thousand nine hundred and eleven, came the grand jurors of the United States of America, duly empaneled within and for the district and division aforesaid, and presented their certain bill of indictment, which said bill of indictment is clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
*Western Division of the Southern
District of Ohio, ss:*

In the District Court of the United States within and for the Western Division of the Southern District of Ohio, in the Sixth Judicial Circuit, of the Term of February, in the Year of Our Lord one thousand nine hundred and eleven.

1st Count—Section 2, Act of June 25, 1910, 36 Stat., 825, "White-Slave Traffic Act."

The Grand Jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the western division of said district, upon their oaths and affirmations, present Della Bennett, on or about, to wit, the

twenty-ninth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the Western Division of the Southern District of Ohio, and within the jurisdiction of this court, did then and there unlawfully and knowingly cause to be transported, and did aid and assist in obtaining transportation for, and in transporting in interstate commerce, to wit, from the city of Chicago, in the State of Illinois, to and into the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, two certain women, to wit, Opal Clark and Eva Parks, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Della Bennett that said Opal Clark and Eva Parks, and each of them, would and should in the said city of Cincinnati, State of Ohio, gage in acts and practice of offering and submitting her body to common, illicit and indiscriminate sexual intercourse with men for hire and gain, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

2d Count.—Section 2, Act of June 25, 1910, 36 Stat., 825, "White-Slave Traffic Act."

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Della Bennett, on or about, to wit, the twenty-ninth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the Western Division of the Southern District of Ohio, and within the jurisdiction of this court, did then and there unlawfully and knowingly procure and ob-

tain, and cause to be procured and obtained, at the city of Chicago, in the State of Illinois, two certain railroad passenger tickets from the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, then and there a common carrier of passengers, engaged in interstate commerce; each of which said tickets was then and there good for transportation for one person from said city of Chicago, in the State of Illinois, to the city of Cincinnati, in the State of Ohio, upon and over the line and railroad route of said railway company; with the purpose and intention that said tickets should be used by two certain women, to wit, Opal Clark and Eva Parks, in interstate commerce, to wit, in going from said city of Chicago, in the State of Illinois, to said city of Cincinnati, in said State of Ohio, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Della Bennett that each of said women, to wit, Opal Clark and Eva Parks, would and should, in said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit, and indiscriminate sexual intercourse with men for hire and gain; whereby and with the means and by the use of said tickets said Opal Clark and said Eva Parks were then and there and thereupon carried and transported as passengers in interstate commerce, over and upon the railway route and line of said railway company, to wit, from said city of Chicago, in the State of Illinois, to and into said city of Cincinnati, in the State of Ohio, and within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, for the purposes aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

3d Count.—Section 3, Act of June 25, 1910, 36 Stat., 825, "White-Slave Traffic Act."

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further 'present that Della Bennett, on or about, to wit, the twenty-ninth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the Western Division of the Southern District of Ohio, and within the jurisdiction of this court, did then and there unlawfully and knowingly persuade, induce, entice, and cause to be persuaded, induced, and enticed, two certain women, to wit, Opal Clark and Eva Parks, to go from one place, to wit, the city of Chicago, in the State of Illinois, to another place, to wit, the city of Cincinnati, in the State of Ohio, within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, in interstate commerce, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Della Bennett, that each of said women, to wit, Opal Clark and Eva Parks, would and should in the said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit, and indiscriminate sexual intercourse with men for hire and gain, with the consent of said Opal Clark and Eva Parks; and did then and there and thereby knowingly cause and aid and assist in causing said women, to wit, Opal Clark and Eva Parks, to go and be carried and transported in interstate commerce, as passengers, upon and over the railway route and line of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a common carrier engaged in interstate commerce, to wit, from the said city of Chicago, in the State of Illinois, to and into the said

city of Cincinnati, in the State of Ohio, for the purposes aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SHERMAN T. MCPHERSON,
United States Attorney, S. D. O.

The following endorsement appears on the back of said indictment:

A true bill.

WM. H. DAVIS, *Foreman.*

[Endorsed:] File No. 23,144. Supreme Court U. S. October term, 1911. Term No. 1068. Della Bennett, pl'ff in error, vs. The United States of America. Petition for writ of certiorari. Filed April 10, 1912.

Supreme Court of the United States

Emma R. Smith and Bessie Green,
Petitioners,

vs.

The United States of America,
Respondent.

Della Bennett,
Petitioner,

vs.

The United States of America,
Respondent.

BRIEF ON BEHALF OF PETITIONERS.

A petition has been filed in each of the above entitled causes for a writ of certiorari, and the two cases are briefed together, as the same question is involved in both cases, to wit—the constitutionality of the White Slave Traffic Act.

Counsel respectfully submits to the Court that the Statute, which the petitioners are charged with violating, is unconstitutional.

That said Act was passed by Congress in pursuance of Paragraph 3, of Section 8, of the Constitution of the United States, which provides that Congress shall have power “to regulate Commerce with foreign nations and among the several States, and with the Indian tribes.”

We respectfully submit that “PERSONS ARE NOT SUBJECTS OF COMMERCE.”

The true test as to whether an article or thing is a proper subject of Commerce and can be considered as a commercial article is whether the said article or thing is *merchantable*."

New York v. Miln, 11 Peters, 102, Syl. 12.

Bowman v. Chicago & C. Railway Co., 125 U. S., 489.

License Cases, 5 How., p. 599.

It will be noted that the indictment in the cases, charged petitioners with having transported, etc., the women mentioned in the indictments for the purpose that the women shall commit acts of prostitution in the City of Cincinnati, Ohio.

Congress has no power or authority to punish crimes of prostitution.

Congress has no authority to legislate or to make a criminal act anything which may be done in a sovereign state by any person.

The only power Congress has over any person is while such person is "in transitu."

Lemon v. The People, 26 Barb., (N. Y.) 270. Syl. 3, 4 and 5.

Affirmed, 20 New York, 562.

CONGRESS HAS NOT PROHIBITED PROSTITUTES FROM TRAVELING.

There is no question but what Congress has the right to enact any criminal statute which may be necessary and proper for carrying into execution the power specially granted under Section 8, Article 1, of the Constitution.

Congress has under the Commerce clause of the Constitution power to regulate commerce and per-

haps forbid commerce in any commodity or to forbid any particular form of commerce, and when it has exercised that power of regulation, then, and *not until* then, the power to enact a criminal statute as a convenient means of carrying into execution the power to forbid under the Commerce clause arises.

To make it plain, Congress has not enacted by any statute that it shall be unlawful for any woman or girl to travel from one state to another for any purpose whatever. Until Congress has so legislated, then the incidental power to create a criminal statute as a convenient method of enforcing a law already enacted, *does not* arise.

In the liquor cases, the slaughter-house cases and a long line of decisions it has been declared "That the power vested in Congress to regulate commerce among the several states is to prescribe the rule by which that commerce is to be governed"—that it must be governed by uniform system and so long as Congress *does not* by any law regulate it, it indicates its will that such commerce shall be free and untrammelled.

This doctrine is laid down in the case of *Welton v. State of Missouri*, 91 U. S., p. 275. Syllabus 4, of said case, reads as follows:

The non-exercise by Congress of its power to regulate commerce among the several states is equivalent to a declaration by that body that such commerce shall be *free* from restrictions.

In the case of *Hall v. DeCuir*, 95 U. S., 485, the Supreme Court in its opinion on page 490, says:

The power of regulation may be exercised without legislation as well as with it. By refraining from action, Congress, in effect, adopts as its own regulations those which the Common law or the Civil law, where that prevails, has provided for the government of such business, and those which the states in the regulation of their domestic concerns, have established affecting commerce, but not regulating it within the meaning of the Constitution. In fact, Congressional legislation is only necessary to cure defects in existing laws, as they are discovered and to adopt such laws to new developments of trade.

As was said by Mr. Justice Field, speaking for the court, in *Welton v. State of Missouri*, 91 U. S., 282, "inaction (by Congress) * * is equivalent to a declaration that *interstate commerce shall remain free and untrammelled*."

And in the case of *Weber v. Virginia*, 103 U. S., p. 344, Justice Field rendering the opinion of the court, says on page 351 (speaking of the non-action of Congress in regulating commerce) —

Its non-action in such cases, with respect to any particular commodity or mode of transportation, is a declaration of its purpose that the commerce in that commodity or by that means of transportation *shall be free*.

In the case of *Smith v. Alabama*, 124 U. S., 465, Mr. Justice Matthews in the opinion on page 473, says:

As the regulation of commerce may consist in abstaining from prescribing positive rules for its conduct, it can not always be said that the power to regulate is dormant because not affirmatively exercised. And when it is manifest that Congress intends to leave that commerce, which is subject to its jurisdiction, free and unfettered by any positive regulations, such intention would be contravened by state laws operating as regulations of commerce as much as though these had been expressly forbidden.

Now then, Congress having passed no act making it unlawful for women to travel from state to state for any purpose, it is equivalent to the declaration of Congress that such travel by such person shall be *free and untrammelled*.

If then the travel from state to state by women must be considered to be declared by Congress as "free and untrammelled," how then may Congress enact a criminal statute, making it a crime for any person to incidentally assist such travel by such women. Is it not making the person who assists an accessory, *not to a crime*, but to an act that Congress has declared to be lawful?

The right of Congress to enact a criminal statute can only be an auxiliary method of enforcing some legislation under its express power. If it had not exercised the express power, the auxiliary power fails for something to stand upon, and this is illustrated in the case of the *United States v. DeWitt*, 76th U. S., (9 Wallace), page 41, in which case a statute making it a misdemeanor, punishable by fine and imprisonment,

to mix for sale naphtha and illuminating oils, etc. An indictment in this case went to the Supreme Court on a division of opinion. It was held that under the Internal Revenue taxing power that the Government might have made a statute regulating the mixing of these commodities as a measure plainly adapted to secure the collection of a tax imposed, but as Congress had not exercised its taxing power, its incidental regulating power did not exist.

In these cases, as will be seen, Congress has not passed a law prohibiting women from traveling for any purpose, and I submit therefore that it can not be a crime to aid such women in traveling from place to place.

Congress has not exercised its power to direct that no woman or girl shall travel from place to place for any purpose whatever, moral or immoral, but, on the contrary, by its failure to so legislate, by its very negative act had declared that right to exist.

While that right exists, a criminal statute of the character discussed, which of necessity must be auxiliary to some other, must be void if the other statute, to-wit, the regulatory statute, does not exist.

I therefore submit for the consideration of the court the following:

First. Congress has not forbidden women to travel from state to state for an improper purpose.

Second. Under the decisions, the Commerce power of Congress is a dormant power until brought into action.

Third. The failure of Congress to regulate or forbid a certain class of commerce is equivalent to a

declaration of Congress that that commerce shall be free and untrammelled.

Fourth. It can not be a crime to assist commerce which Congress by its inaction has declared shall exist free and untrammelled, because it has no power to pass a criminal statute, except to enforce the provisions of a regulating statute, which, in these cases, has not been enacted.

WHITE SLAVERY STATUTE DISTINGUISHED FROM LOTTERY CASE.

The Circuit Court of Appeals, as well as the District Court, seems to be under the mistaken opinion that if Congress could prohibit interstate carriers from carrying lottery tickets, it also could prohibit the carrying of prostitutes.

It has been held time and again by this Court, that for any commodity or article to come under the protection of interstate Commerce, it must be either *merchantable*, or have some money value. And, in the famous Lottery cases decided in 188 U. S., 321, Justice Harlan expressly says that lottery tickets are *articles of value*, and Syllabus 1 in said case, reads as follows:

Lottery tickets are subject of contract among those who choose to buy and sell them, and their carriage by independent carriers from one state to another is therefore interstate Commerce, which Congress may prohibit under its power to regulate Commerce among the several states.

A prostitute is not an article of value in the sense that she can be bought and sold, or that she is a commodity. She is a person, and an examination of the authorities will show that wherever Congress attempted to prohibit, or did prohibit, the importation of any article or commodity, that in no case of such attempted prohibition * * * persons were prohibited from traveling from place to place, or be transported from place to place, and the only right that Congress has, under the enumerated powers of the Constitution, of prohibiting transportation of persons, are in cases of immigration, as the subject of immigration comes under the power of Congress to regulate commerce with foreign countries.

It is said, however, that Congress has a right to regulate interstate commerce * * * method of doing business, etc. * * * That is true. Congress may provide certain laws regulating the transportation of merchandise and passengers; the kind of cars to be used * * * the safety appliances on the cars or locomotives; may provide rules to regulate the hours of labor for the employees, etc.; but upon what theory can it be urged that Congress in its enumerated powers shall or can say that people by reason of their occupation, race or color, shall or shall not travel or be transported in interstate carriers.

Justice McLean in the *Passenger* cases, 7 How., 283, in his decision on page 405, uses the following language:

If the transportation of passengers be a branch of commerce, of which there can be no

doubt, it follows that the act of New York in imposing this tax is a regulation of commerce. It is a tax upon commercial operation—upon what may, in effect, be called an import. In a commercial sense no just distinction can be made, as regards the law in question, between the transportation of merchandise and passengers. For the transportation of both, the ship owner realizes *the profit*, and which is the subject of commercial regulation by Congress. When the merchandise is taken from the ship, and becomes mingled with the property of the people of a state, like other property, it is subject to local laws; but until this shall take place, the merchandise is an import, and is not subject to the taxing power of a state, and the same rule applies to passengers, when they leave the ship, and mingle with the citizens of a state, they become subject to its laws.

In the case of *King et al v. American Transportation Co.*, 14 Fed. Cases, 512, Syllabus 8, reads as follows:

(8) Congress has power to legislate over navigation, as well as trade * * * over intercourse, as well as traffic * * * as to what shall constitute American vessels and the national character of the same, who shall navigate them, and may prescribe rules and regulations for the intercourse and navigation of such vessels between the different states, but this constitutional grant of power "to regulate commerce with foreign nations and among the several states," does not confer upon Congress the authority to extend its legislation and authority

over the entire sphere of legislation of the several states.

So we see in this case that Congress has a right to prescribe the rules as to who shall operate trains, the rates to be charged, etc., but it has no power to say what class of people shall not be carried on said trains, unless they be convicted malefactors of the law, under restraint, or undesirable aliens so declared by law.

(9) Each state has exclusive control of all matters appertaining to its own internal police. It can establish and regulate ferries; control the moving of vessels in its harbors, and enact health and inspection laws. It has the same unlimited jurisdiction over all persons and things within its limits as foreign nations, where that jurisdiction is not surrendered or restrained by the Constitution of the United States.

(10) Courts have never gone so far in their interpretation of this constitutional power of Congress, as to declare that it is operative upon persons and things upon land within the boundaries of state jurisdiction. It has never been controverted that the rights and duties of persons in relation to property are rightfully prescribed and controlled by the laws of the state within whose limits it is found.

In the case of *Boyce v. Anderson*, 2nd Peters, 150, in which case the question arose as to the responsibility of common carriers who carried slaves, as to whether the slaves resembled passengers or merchandise, Chief Justice Marchall says:

A slave has volition, and has feelings which can not be entirely disregarded. These properties can not be overlooked in conveying him from place to place. He can not be stowed away as a common package. Not only does humanity forbid this proceeding, but it might endanger his life or health. Consequently, this rigorous mode of proceeding can not be safely adopted unless stipulated for by special contract. Being left at liberty, he may escape. The carrier has not, and can not have, the same absolute control over him that he has over inanimate matter. In the nature of things, and in his character, he resembles a passenger, not a package of goods. It would seem reasonable, therefore, that the responsibility of the carrier should be measured by the law which is applicable to passengers, rather than by that which is applicable to the carriage of common goods.

The above authorities are submitted to the Court as a brief, showing that the White Slave Law is unconstitutional, infringes on the police power of the States, and that this Court should pass upon its validity.

Respectfully submitted,

MAX LEVY,

Counsel for Petitioners.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

EMMA HARRIS, ALIAS EMMA R. SMITH, and Bessie Green, petitioners, <i>v.</i> THE UNITED STATES.	}	No. 1067.
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DELLA BENNETT, PETITIONER, <i>v.</i> THE UNITED STATES.	}	No. 1068.
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*PETITIONS FOR WRIT OF CERTIORARI TO THE CIRCUIT
COURT OF APPEALS FOR THE SIXTH CIRCUIT.*

BRIEF FOR THE UNITED STATES IN OPPOSITION.

STATEMENT.

These cases are now before this court upon writs of error. Counsel for petitioners having been notified that the United States would present a motion to dismiss the writs of error on April 29th, served notice that applications would be made for a writ of certiorari on the same day.

The sole ground urged in support of the petitions is the alleged unconstitutionality of the act of Congress approved June 25, 1910, known as the

White-Slave Traffic Act (36 Stat., 825). Sections 2 and 3 of that act, under which the indictments were found, provide:

SEC. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall

be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 3. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than five thousand dollars, or by imprisonment for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court.

The validity of the act is attacked on the ground that "persons are not subjects of commerce," and

also upon the theory that, as Congress has not prohibited prostitutes from traveling from one State to another, it can not regulate or prohibit the transportation of such persons in interstate or foreign commerce.

It is submitted that the propositions presented by petitioners are concluded by the decisions of this court. In disposing of these contentions below, the Circuit Court of Appeals in the Bennett case said:

It can not now be doubted that transportation, of persons as well as of property, is commerce, and that Congress may regulate the interstate transportation of persons. (*Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 196, 203; *Covington Bridge Co. v. Kentucky*, 154 U. S., 204, 217; see also the cases involving passenger traffic under the interstate commerce acts.)

It is also settled that the constitutional power to regulate includes the power to prohibit, in cases where such prohibition is in aid of the lawful protection of the public. (*The Lottery Case*, 188 U. S., 321, 354.)

We think it a mistake to assume that this statute does not prohibit, and so impliedly permits, the primary act and yet punishes as a crime a merely incidental wrong. The act does not undertake to prohibit the woman from traveling from one State to another of her own volition, and in the supposed exercise of her inherent personal rights, no matter what her purpose as to her future conduct may be. This conclusion is emphasized by observing

that the woman traveling may be perfectly innocent of any intended immorality, and that the act can not be intended to interfere with liberty of travel by such person. The primary thing forbidden is the inducing of a person to come into the State, with unlawful purpose by the inducer and in aid of such unlawful purpose, but without direct regard to the innate character or purpose of the person induced. It is this primary thing and the incidental transportation by the carrier which are forbidden and penalized.

Petitioners fail to distinguish between travel and transportation. The transportation of a person from one State to another is interstate commerce, but the traveler, although the subject of such commerce, is not himself engaged in it, and therefore is not subject to regulation by Congress on that ground.

There is no conflict of decision on this subject. On the contrary, the act has been upheld in every case in which its constitutionality has been attacked. (See *United States v. Westman*, 182 Fed., 1017, District Court, District of Oregon; *United States v. Hoke*, 187 Fed., 992, District Court, Eastern District of Texas; *United States v. Warner*, 188 Fed., 682, Circuit Court, Southern District of New York.)

The fact that these cases might have been brought here direct from the District Court, and that a writ of error will not lie from this court to the Circuit Court of Appeals, is not a sufficient reason for issuing a writ of certiorari therein. Having elected to go to the Circuit Court of Appeals, they should abide by

their choice of remedies. Besides, in view of the lottery and passenger cases, above cited, there is not sufficient merit in the contention as to the unconstitutionality of the White-Slave Traffic Act to warrant an appeal direct from the District Court upon that ground. (*Farrell v. O'Brien*, 199 U. S., 100; *David Kaufman & Sons Company v. Smith*, 216 U. S., 610.)

The petitions for the writ of certiorari should therefore be denied.

Respectfully submitted.

WILLIAM R. HARR,
Assistant Attorney General.

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Supreme Court of the United States

No. 23,143. October Term, 1912

*EMMA HARRIS, alias Emma R. Smith, and
BESSIE GREEN,*

Plaintiffs in Error and Petitioners,

No. 602.

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

No. 23,144. October Term, 1912

DELLA BENNETT,

Plaintiff in Error and Petitioner,

No. 603.

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

BRIEF AND ARGUMENT OF THE PLAINTIFFS IN ERROR AND PETITIONERS.

By their Counsel, Mr. Max Levy.

STATEMENT OF THE CASE.

The plaintiffs in error and petitioners were indicted and convicted in the United States District Court for the Southern District of Ohio, Western Division, for a violation of Sections 2 and 3 of the Act of June 25th, 1910, 36th Stat., 825, known as "The White Slave Traffic Act."

As the principal question involved in these cases is the constitutionality of the so-called White Slave Act, and the errors alleged to have occurred in the trial court are practically the same, both of these cases will be briefed, argued and submitted together.

The provisions of the Statute alleged to have been violated by the plaintiffs in error and petitioners are as follows:

“Sec. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall

be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both, such fine and imprisonment, in the discretion of the court.

Sec. 3. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than five thousand dollars, or by imprisonment for a term not exceeding five years, or both at the discretion of the court."

WHITE SLAVE STATUTE ANALYZED.

A careful analysis of the Statute in question develops that the said Act provides for the punishment of

- 1st. Persons "who shall knowingly transport;"
- 2nd. "Or cause to be transported;"

3rd. "Or aid or assist in obtaining transportation for;"

4th. "Or in transporting, in interstate or foreign commerce, or in any territory, or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose." * *

Further—

(1) "Or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute, or to give herself up to debauchery, or to engage in any other immoral practice." * * *

Further—

(1) "Or shall knowingly procure or obtain, or cause to be procured or obtained, or aid, or assist, or procure in obtaining any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any territory, or District of Columbia, in going to *any place* for the purpose of prostitution or debauchery, or for any other immoral purpose." * *

Further—

"Or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any territory or the District of Columbia." * * *

CONSTITUTIONALITY OF THE ACT RAISED

The plaintiffs in error and petitioners attacked the constitutionality and legality of the Statute in

question, by Motions to Quash, Demurrer and Motions in Arrest of Judgment, as per the first, second and twenty-fourth Assignment of Errors in the United States Circuit Court of Appeals, Sixth Circuit, in the case of Emma Harris et al, v. The United States; and as per the first, second and seventh Assignment of Errors in the above entitled case No. 602 in this Court. And in the case of Della Bennett v. The United States in the first, second and forty-second Assignment of Errors in the United States Circuit Court of Appeals, Sixth Circuit, and in the first, second and tenth Assignment of Errors in this Court No. 603.

Inasmuch as the aforementioned Assignment of Errors all raise the same question, to-wit, the Constitutionality of the so-called White Slave Statute, they will be treated as one and briefed and argued together. The Motions to Quash, Demurrers and Motions in Arrest of Judgment which were overruled in the courts below and exceptions taken, as appears by the record, are covered in the aforementioned assignment of errors.

ARGUMENT BY MR. MAX LEVY UNDER THE PROPOSITIONS RAISED ABOVE.

INTERSTATE COMMERCE REGULATION.

The only authority that Congress could have to enact the statute in question can be found in paragraph 3 of Section VIII of the Constitution of the United States, which provides that Congress shall have power "to regulate *Commerce* with foreign nations and among the several states, and with the Indian Tribes." * *

UNIQUE FEATURES OF THE LAW.

A careful analysis of the Statute in question develops—First, that it is not a crime for a common

carrier to carry a person from place to place for the purpose of prostitution, or for any other purpose.

Second. The person traveling, or being carried, cannot be punished for traveling on the common carrier, notwithstanding the fact that she may be traveling *voluntarily* for the purpose of prostitution.

Third. It is only the person who purchases the ticket etc., or in any way advises a woman or girl to travel interstate who is punished. In other words, the *accessory* is punished, and *not* the principal.

INTERSTATE COMMERCE—WHAT CONSTITUTES. CANNOT INFRINGE UPON THE POLICE POWERS OF THE STATE.

That persons are not subjects of commerce, was decided in the early case of *New York v. Miln*, 11 Peters, 102; Syllabus 12 of which case reads as follows:

“Persons are not subjects of commerce; and not being imported goods, they do not fall within the reasoning founded upon the construction of a power given to Congress to regulate commerce, and the prohibition of the states from imposing a duty on imported goods.”

No one will contend that persons are the subjects of commerce. No one will contend that prostitutes are subjects of commerce. The true test as to whether an article or thing is a proper subject of commerce and can be considered as a commercial article is whether the said article or thing is *merchantable*.

Such was the ruling of the court in the case of *Bowman v. Chicago & C. Ry. Co.*, 125 U. S. 489, and the court in its opinion in said case, says:

"Doubtless the states have power to provide by law suitable measures to prevent the introduction into the states of articles of trade, which, on account of their existing condition, would bring in and spread disease, pestilence and death, such as rags or other substances infected with the germs of yellow fever or the virus of smallpox, or cattle or meat or other provisions that are diseased or decayed, or otherwise from their condition and quality, unfit for human use or consumption. Such articles are not *merchantable*. They are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human life and health. The self protecting power of each state, therefore, may be rightfully exerted against their introduction, and such exercises of power can not be considered regulations of commerce prohibited by the Constitution.'

While it is true that the Supreme Court of the United States has held repeatedly, notably in question concerning the sale of goods coming in original packages carried by common carriers, such as whiskeys and liquors, which were carried into prohibition states, that so long as the goods remained in the original packages, they were subject to interstate commerce regulations, and the states could not interfere, but the moment the original package was broken, and the goods were attempted to be sold retail or piecemeal from the original package, then the laws of the various states were supreme, and persons dealing with those articles could be punished, because the articles had lost the protection of interstate commerce legislation the minute the original package was broken.

The person prohibited to be carried, under the act under consideration, in the first place is an outlaw. By that I mean to say, her business is not subject to the protection of the laws, and no act can be passed by either Legislature or Congress legalizing her vocation. She travels interstate from different states in the same manner and in the same condition in which she was when she first stepped into the common carrier in the state from which she was transported. *She is not merchantable—she is not a commodity*—and true it is that such persons are a menace in many cases to human life and health, and, therefore, under the authority laid down in 125th United States, *Bowman v. Chicago & C. Ry. Co.*, 489, the states, and only the states, can rightfully exert their authority against the introduction of such classes of people, and Congress cannot interfere.

And, speaking on the same subject, to-wit, of the police powers as reserved to the states, and its relation to the power granted to Congress over commerce, Mr. Justice Catron in the License cases, 5 How., p. 599, says:

“The assumption is, that the police power was not touched by the Constitution, but left to the states as the Constitution found it. This is admitted; but whenever a thing, from character or condition, is of a description to be regulated by that power in a state, then the regulation may be made by the state, and Congress can not interfere. But this must always depend upon the facts, subject to legal ascertainment, so that the injured may have redress. And the fact must find its support in this, whether the prohibited article belongs to, and is *subject to be regulated as a part of, foreign commerce, or of commerce among the states.*

If from its nature, it does not belong to commerce, or if its condition, from putrescence or other cause, is such, when it is about to enter the state that it no longer belongs to commerce, it, in other words, *is not a commercial article*, then the state power may exclude its introduction. And as an incident to this power, a state may use means to ascertain the fact. And here is the limit between the sovereign power of the state and the federal power. That is to say, *that which does not belong to commerce is within the jurisdiction of the police power of the state*, and that which does belong to commerce is within the jurisdiction of the United States.

Let us consider just what the decision, just quoted, means. The woman or girl transported is not a commercial article. *She has no legal value, so far as merchandise is concerned*. She can not be considered as merchandise, and therefore the laws of interstate commerce can not be so exercised as to say that a prostitute is a commercial article, and that common carriers shall not carry her upon the route, or that *no person shall assist her in coming over such a route*.

And quoting again the burning words of Mr. Justice Catron * * "That which does not belong to commerce is within the jurisdiction of the police power of the state; and that which does belong to commerce is within the jurisdiction of the United States."

In the famous case of *New York v. Miln*, 11 Peters, 102, Syllabus 8 reads as follows:

"(8) A state has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as *any*

foreign nation; when the jurisdiction is not surrendered or restrained by the Constitution of the United States."

Syl. (10) "All those powers which relate to merely municipal legislation, or which may more properly be called internal police; are not surrendered or restrained, and consequently, in relation to these the authority of a state is complete, unqualified and exclusive."

The court in its opinion on page 153b uses the following language:

"If there is any one case to which the following remark of this court is peculiarly applicable, it is this: 'It does not appear to be a violent construction of the Constitution, and it is certainly a convenient one, to consider the power of the states as existing over such cases as the laws of the Union *may not* reach.' 4 Wheat., 195.

"Let this case be tested by this rule, and let it be shown, that any clause in the Constitution empowers Congress to pass a law which reach the subject of pauperism, or the case of a pauper imported from a foreign nation or another state. *They are not articles of merchandise or traffic*, imports or exports. Congress can not compel the states to receive and maintain them, nor establish a system of poor laws for their benefit or support; and there can be found in no decision of this court any color for the proposition, that they are in any respect placed under the regulation of the laws of the Union, or that the states have any plenary power over them."

Let us see what the law under consideration means. Persons are prohibited from aiding or assisting any girl or woman to go from one state to another, for the purpose of prostitution.

Where will the criminal act be consummated, and when does the crime start? Truly not while the person who is being transported is on the common carriers, but the crime starts when such person lands upon the soil of a sister state and enters into the prohibited occupation. In what possible way can any one urge that the laws of the United States can reach such person? *She is violating no law of the Union*, but the law that such female is violating comes under the police power of the state over which the states have exclusive jurisdiction and control. The Government of the United States loses jurisdiction over such person, if they have any legal jurisdiction at all, the minute a person leaves the common carrier, and then the police powers of the state apply. As was said in the famous case of *New York v. Miln*, 11 Peters, 102, on page 148:

* * "After that, when they have ceased (meaning passengers) to have any connection with the ship, and when, therefore, they have ceased to be passengers, we are satisfied that acts of Congress, applying to them as such, and one professing to legislate in relation to them as such, have then performed their office, and can, with no propriety of language, be said to come into conflict with the law of a state, whose operation only begins when that of the laws of Congress ends; whose operation is not even on the same subject, because although the person on whom it operates is the same, yet having ceased to be a passenger, he no longer stands in the *only* relation in which the laws of Congress either professed or intended to act upon him."

Speaking further on the same subject, the court says:

* * * "Can anything fall more directly within the police power and internal regulation of a state, than that which concerns the care and management of paupers or convicts, or any other class or description of persons that may be thrown into the country, and likely to endanger its safety, or become chargeable for their maintenance? * *

In this connection, it is well to recall the resolution passed in one of the early Congresses, passed on September 16, 1788, and which is found in Volume 13, Journal of Congress, 142. This resolution is spoken of in the case of *New York v. Miln*, *Ibid*, 148. Said resolution is as follows:

"Resolved, that it be and it is hereby *recommended* to the several states, to pass proper laws for preventing the transportation of convicted malefactors from foreign countries into the United States.

Although this resolution is confined to a certain description of persons, the principle involved in it must embrace every description which may be thought to endanger the safety and security of the country. But the more important bearing which the resolution has upon the question now before this court, relates to the *source* of the power which is to interpose this protection. It was passed, after the adoption of the Constitution by the Convention, which was on the 17th day of September, 1787. It was moved by Mr. Baldwin, and seconded by Mr. Williamson, both distinguished members of the Convention which framed the Constitution, and is a strong contemporaneous ex-

pression, not only of their opinion, but that of Congress, that this was a *power resting within the states*; and not only not *relinquished* by the states, or embraced in any powers granted to the general government, but still remains *exclusively* in the states." * *

Again the court in speaking upon the subject, says:

"On the same principle by which a state may prevent the introduction of infected persons or goods, and articles dangerous to the persons or property of its citizens, it may exclude paupers who will add to the burdens of taxation, or convicts who will corrupt the morals of the people, threatening them with more evils than gunpowder or disease. The whole subject is necessarily connected with internal police of a state, no item of which has been excepted from the prohibition of the states, and is, of course, included among their reserved powers."

Let us observe that the class of persons, mentioned in the law under consideration, are of the class "who will add to the burdens of taxation, and who will corrupt the morals of the people," and as is said by the court in the previous paragraph, that the whole subject in dealing with persons of the character under consideration is one that is necessarily connected with internal police of the state, and is one which is included in the reserved powers of the state and belongs exclusively to the states.

How can it be maintained, or how can any one successfully contend that the prohibition of prostitution is a part and parcel of the power of regulating trade between the states? And the court, in the case

of *New York v. Miln*, on page 153d, in speaking of the power of Congress to regulate trade, uses the following language:

"If the power of regulating trade had not been given to the general government, each state would have yet had the power of regulating trade within its territory (3 Wheat., 386, 389), and this power yet adheres to it, subject to the grant, the only question then is, to what trade or commerce that grant extends. This court has held, that it does not extend to the internal commerce of a state, to its system of police, to the subjects of inspection, quarantine, health, roads, ferries, etc., which is a direct negation of any power in Congress. They have also held that 'consequently they remain subject to state legislation,' which is a direct affirmation that those subjects are within the powers reserved, and not those granted or prohibited. * *

* * There is no warrant in the Constitution to authorize Congress to encroach upon the reserved rights of the states by the assumption that it is necessary and proper for carrying their enumerated powers into execution, or to authorize a state, under color of their reserved powers, or the power of executing its inspection or police regulations, to touch upon the powers granted to Congress or prohibited to the states. Implied or constructive powers of either description, are as wholly unknown to the Constitution, as they are utterly with its spirit and provisions." * *

And in the same case, the court speaking on page 153k, says:

* * "A power reserved or excepted in general terms, as *internal police*, is reserved as

much in detail and in all its ramifications, as the granted power to regulate commerce with foreign nations; the parts or subdivisions of the one can not be carried into the other, by any assumed necessity of carrying the given power in one case into execution, which could not be done in the other."

Under power to regulate commerce, Congress has no power to declare the status which any person shall sustain while in a state.'

Amer. & Eng. Ency. of Law, 2d Ed. Vol 17, page 52.

In the case of *Lemmon v. The People*, 26 Barb. (N. Y.), 270, affirmed 20 N. Y., 562, Syllabus 3 reads as follows:

(3) "The clause of the Constitution of the United States giving to Congress power to regulate commerce with foreign nations and among the several states, and with the Indian tribes, confers no power on Congress to declare the status which any person shall sustain while in any state of the Union."

(4) This power belonged, originally, to each state, by virtue of its sovereign and independent character, and has never been surrendered. It is therefore retained by each state, and may be exercised as well in relation to persons *in transitu* as in relation to those remaining in the state."

(5) "The power to regulate commerce may be exercised over individuals as passengers, only while on the ocean, and until they come under state jurisdiction. It ceases when the voyage ends, and then the state laws control."

The above syllabus reaffirmed in the opinion of the Court on page 288, and quoting from said opinion, it is said:

* * "This power to regulate commerce is, as has been expressly declared by the Supreme Court of the United States, did not prevent the state of Mississippi from prohibiting the importation of slaves into that state for the purpose of sale. The same court has held that goods when imported can (notwithstanding any state law) be sold by the importer in the original packages. It follows that the power to regulate commerce confers on the United States some check on the state legislation as to goods or merchandise, after it is brought into the state, *but none as to persons*, after they arrive within such state."

INTENT IMMATERIAL.

It might be said that the intention of the person sending the transportation, and the intention of the person transported is the governing feature. This might be urged by reason of the phrase of the law under consideration, which provides among other things, that any person who shall obtain transportation for, etc., "*with the intent*" that such person transported shall come into another state for the purpose of prostitution. Upon this point, however, the Supreme Court of the United States in the case of *United States v. E. C. Knight & Co.*, 156 U. S., lays down the rule that the intent in a case of this character does not govern, but it is the condition in which each article or subject is found.

The best way to ascertain this rule is to read the decision of Chief Justice Fuller in that case, as found on page 13, which says, amongst other things:

"It will be perceived how far-reaching the proposition is that the power of dealing with a monopoly may be exercised by the general government wherever interstate or international commerce may be ultimately affected. The regulation of commerce applies to the *subjects of commerce* and not to *matters of internal police*. Contracts to buy, sell or exchange goods to be transported among the several states, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purpose of such transit among the states, or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the state and belongs to commerce."

Thus we can further observe from the language of Chief Justice Fuller, that the regulation of commerce applies only to the *subjects of commerce*, and if any article be a subject of commerce, and as stated in decisions heretofore quoted, are *merchantable*, then Congress may regulate the instrumentalities of transportation, and not otherwise, and as before stated, we respectfully submit that the person prohibited under the law, under consideration, from being transported is *not merchantable*, and therefore, *not subject to the regulations of interstate commerce*.

CONGRESS HAS NO RIGHT TO REGULATE OR PUNISH PROSTITUTES.

It is undoubtedly conceded that Congress has no right or authority to pass any law regulating or

punishing the crime of prostitution, or the procuring of prostitution in any of the states of the Union. These crimes, if committed in any of the states of the Union, come under the police powers of the various states with which Congress has no right to interfere.

The various states of the Union have not delegated to Congress the right to interfere with their police powers, such as the regulation of prostitution, etc.

ARTICLE IX.—CONSTITUTION.

Article IX of the Constitution of the United States provides:

“That the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

ARTICLE X.—THE CONSTITUTION.

Article X of the Constitution of the United States provides:

“That the powers delegated to the United States by the Constitution, or prohibited by it to the states, are reserved to the states respectively, or to the people.”

The government of the United States is one of enumerated powers, and all powers not granted are reserved to the people, and speaking on this subject, the Supreme Court of the United States in the case of *Kansas v. Colorado, et al*, 206 U. S. p. 46, Syllabus 2 reads as follows:

“The government of the United States is one of enumerated powers; that it has no in-

herent powers of sovereignty; that the enumeration of the powers granted is to be found in the Constitution of the United States, and in that alone; that the manifest purpose of the Tenth Amendment to the Constitution is to put beyond dispute the proposition that all powers not granted are reserved to the people, and that if in the changes of the years further powers ought to be possessed by Congress, they must be obtained by a new grant from the people."

89. Quoting from the opinion of the court on page

"That this is such a government (of enumerated powers) clearly all legislative power must be vested in either the State or National Government; no legislative powers belong to the State Government other than those which affect solely the internal affairs of that state; consequently all powers which are national in their scope must be found vested in the Congress of the United States. But the proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expressed in the grant of powers is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment. This amendment, which was seemingly adopted with prescience of just such contention as the present, dis-

closed a widespread fear that the National Convention might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted.

With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act. It reads: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.' The argument of counsel ignores the principal factor in this article, to-wit, 'the people.' Its principal purpose was not the distribution of power between the United States and the states, but a reservation to the people of all powers not granted. The preamble of the Constitution declares who framed it, 'We, the people of the United States,' not the people of one state, but the people of all the states, and Article X reserves to the people of all the states the powers not delegated to the United States. The powers affecting the internal affairs of the states not granted to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, and all powers of a national character which are not delegated to the National Government by the Constitution are reserved to the people of the United States. The people who adopted the Constitution knew that in the nature of things they could not foresee all the questions which might arise in the future, all the circumstances which might call for the exercise of further national powers than those granted to the United States, and

after making provision for an amendment to the Constitution by which any needed additional powers would be granted, they reserved to themselves all powers not so delegated. This Article X is not to be shorn of its meaning by any narrow or technical construction, but it is to be considered fairly and liberally so as to give effect to its scope and meaning."

In the case of *Fairbanks v. United States*, 181 U. S., 283, Syllabus 3 reads as follows:

"If the Constitution in its grant of powers is to be able to carry into full effect the powers granted, it is equally imperative that where prohibition or limitation is placed upon the power of Congress, that prohibition or limitation should be enforced in its spirit and its entirety."

Quoting from the opinion of the court on page 288:

"We admit, as all must admit, that the powers of the government are limited, and that these limits *are not to be transcended*. But we think that some consideration of the Constitution must allow the national Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, *which are not prohibited*, but consist with the letter and spirit of the Constitution, are constitutional."

(Quoting Chief Justice Marshall in *McCullough v. Maryland*, 4 Wheat., 421.)

PERSONS NOT COMMERCIAL ARTICLES.

That *persons* have never been regarded as commercial articles, or as subjects of commerce, and are not merchantable, has been decided not only in the case of *New York v. Miln*, 11 Peters, hereinbefore spoken of, but we find Chief Justice Marshall in the early case of *Boyce v. Anderson*, 2 Peters, 149, which was a case wherein a slave was injured by a railroad company, laying down the rule that slaves are regarded as *passengers*, and not as packages of goods. Syllabus 1 of said case reads as follows:

“The law regulating the responsibility of common carriers, does not apply to the case of carrying intelligent beings, such as negroes; the carrier has not, and can not have over them the same control that he has over inanimate matter; in the nature of things, and in their character, they resemble passengers, and not packages of goods. It would seem reasonable therefore, that the responsibility of the carrier should be measured by the law which is applicable to passengers, rather than by that which is applicable to the carriage of common goods.”

Quoting from the opinion of the court, Chief Justice Marshall says as follows:

“This was an action brought in the Court of the United States for the Seventh Circuit and District of Kentucky against the defendants, owners, etc. There being no special contract between the parties in this case, the principal question arises on the opinion expressed by the court,

'that the doctrine of common carriers does not apply to the case of carrying intelligent beings, such as negroes.' The doctrine is, that the carrier is responsible for every loss which is not produced by inevitable accident. It has been pressed beyond the general principles which govern the law of bailment, by consideration of policy. Can a sound distinction be taken between a human being, in whose person another has an interest, and inanimate property?

A slave has volition, and has feelings which can not be entirely disregarded. These properties can not be overlooked in conveying him from place to place. He can not be stowed away as a common package; not only does humanity forbid this proceeding, but it might endanger his life or health. Consequently, the rigorous mode of proceeding can not safely be adopted, unless stipulated for by special contract. Being left at liberty, he may escape. The carrier has not, and can not have, the same absolute control over him that he has over inanimate matter. In the nature of things, and in his character he resembles a passenger, not a package of goods. It would seem reasonable, therefore, that the responsibility of the carrier would be measured by the law which is applicable to passengers, rather than that which is applicable to the carriage of common goods.

It would thus seem from these numerous decisions cited, that the law in question, conflicts with the police power of the states, in that it endeavors to fix the status of the woman and girls spoken of in said law; but said women and girls not being subjects of commerce, they are not even regarded in the category of passengers, in that an attempt is made

to prohibit any person from assisting in their transportation; and we therefore submit that said law is repugnant to the third paragraph of the 8th clause of the Constitution of the United States, and that it is further repugnant to the 9th and 10th Articles of the constitution of the United States, as they come under and within the reserved powers of the state, and viewing the questions involved from purely a legal standpoint, we respectfully submit that said law is not valid. And using the language of the Supreme Court of the United States in the case of Norton v. Shelby County, 118 U. S., 425:

“An unconstitutional act is not a law. It is in legal contemplation as though it had never been passed.”

INDEPENDENCE BETWEEN COMMERCIAL POWER AND POLICE POWER.

The decisions of this Court are unanimous to the effect that Congress cannot interfere with the police powers of the states. Speaking upon the power of Congress to pass a law infringing upon the police powers of the states, by virtue of the commerce clause of the Constitution, hereinbefore mentioned, Chief Justice Fuller in the case of the United States v. E. C. Knight & Co., 156 U. S., p. 13, uses the following language:

“It is vital that the independence of the commercial power and of the police power and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states as required by our dual form of gov-

ernment; and acknowledged evils, however grave and urgent they may appear to be, *had better be borne*, than the risk be run, in the effort to suppress them, of more consequences by resort to expedients of even doubtful constitutionality."

CONGRESS HAS NOT PROHIBITED PROSTITUTES FROM TRAVELING.

There is no question but what Congress has the right to enact any criminal statute which may be necessary and proper for carrying into execution the power specially granted under Section 8, Article 1 of the Constitution.

Congress has under the Commerce clause of the Constitution power to regulate the commerce and perhaps forbid commerce in any commodity, or to forbid any particular form of commerce, and when it has exercised that power of regulation, then, and *not until then*, the power to enact a criminal statute as a convenient means of carrying into execution the power to forbid under the Commerce clause arises.

To make it plain, Congress has not enacted by any statute that it shall be unlawful for any woman or girl to travel from one state to another for any purpose whatever. Until Congress has so legislated, then the incidental power to create a criminal statute as a convenient method of enforcing a law already enacted, *does not arise*.

In the liquor cases, the slaughter-house cases and a long line of decisions it has been declared "That the power vested in Congress to regulate commerce among the several states is to prescribe the rule by which that commerce is to be governed"—that it must be governed by uniform system and so

long as Congress *does not* by any law regulate it, it indicates its will that such *commerce shall be free and untrammelled*.

This doctrine is laid down in the case of *Welton v. State of Missouri*, 91 U. S., p. 275. Syllabus 4 of said case reads as follows:

“The non-exercise by Congress of its power to regulate commerce among the several states is equivalent to a declaration by that body that such commerce shall be *free* from restrictions.”

In the case of *Hall v. DeCuir*, 95 U. S., 485, the Supreme Court in its opinion on page 490, says:

“The power of regulation may be exercised without legislation as well as with it. By refraining from action, Congress, in effect, adopts as its own regulations those which the Common law or the Civil law, where that prevails, has provided for the government of such business, and those which the states in the regulation of their domestic concerns have established affecting commerce, but not regulating it within the meaning of the Constitution. In fact, Congressional legislation is only necessary to cure defects in existing laws, as they are discovered and to adopt such laws to new developments of trade.

“As was said by Mr. Justice Field, speaking for the court in *Welton v. State of Missouri*, 91 U. S., 282, ‘inaction (by Congress) * * is equivalent to a declaration that *inter-state commerce shall remain free and untrammelled*.’ ”

And in the case of *Webber v. Virginia*, 103 U. S., p. 344, Justice Field rendering the opinion of the court, says on page 351 (speaking of the non-action of Congress in regulating commerce) —

“Its non-action in such cases, with respect to any particular commodity or mode of transportation, is a declaration of its purpose that the commerce in that commodity or by that means of transportation *shall be free.*”

In the case of *Smith v. Alabama*, 124 U. S. 465, Mr. Justice Matthews in the opinion on page 473, says:

“As the regulation of commerce may consist in abstaining from prescribing positive rules for its conduct, it can not always be said that the power to regulate is dormant, because not affirmatively exercised. And when it is manifest that Congress intends to leave that commerce, which is subject to its jurisdiction, free and unfettered by any positive regulations, such intention would be contravened by state laws operating as regulations of commerce as much as though these had been expressly forbidden”

Now, then, Congress having passed no act making it unlawful for women to travel from state to state for any purpose, it is equivalent to the declaration of Congress that such travel by such person shall be *free and untrammelled*.

If then the travel from state to state by women must be considered to be declared by Congress as “free and untrammelled,” how then may Congress enact a criminal statute, making it a crime for any person to incidentally assist such travel by such

women. Is it not making the person who assists an accessory, *not to a crime*, but to an act that Congress has declared to be lawful?

The right of Congress to enact a criminal statute can only be an auxiliary method of enforcing some legislation under its express power. If it has not exercised the express power, the auxiliary power fails for something to stand upon, and this is illustrated in the case of *The United States v. De Witt*, 76th U. S., (9 Wallace), page 41, in which case a statute making it a misdemeanor, punishable by fine and imprisonment, to mix for sale naptha and illuminating oils, etc. An indictment in this case went to the Supreme Court on a division of opinion. It was held that under the Internal Revenue taxing power that the Government might have made a statute regulating the mixing of these commodities as a measure plainly adapted to secure the collection of a tax imposed, but as Congress had not exercised its taxing power, its incidental regulating power did not exist.

In these cases, as will be seen, Congress has not passed a law prohibiting women from traveling for any purpose, and I submit therefore that it can not be a crime to aid such women in traveling from place to place.

Congress has not exercised its power to direct that no woman or girl shall travel from place to place for any purpose whatever, moral or immoral, but, on the contrary, by its failure to so legislate, by its very negative act has declared that right to exist.

While that right exists, a criminal statute of the character discussed, which of necessity must be auxiliary to some other, must be void if the other statute, to-wit, the regulatory statute, does not exist.

I therefore submit for the consideration of the court the following:

First. Congress has not forbidden women to travel from state to state for an improper purpose.

Second. Under the decisions, the Commerce power of Congress is a dormant power until brought into action.

Third. The failure of Congress to regulate or forbid a certain class of commerce is equivalent to a declaration of Congress that that commerce shall be free and untrammelled.

Fourth. It can not be a crime to assist commerce which Congress by its inaction has declared shall exist free and untrammelled, because it has no power to pass a criminal statute, except to enforce the provisions of a regulating statute, which, in these cases, has not been enacted.

If within the enumerated powers granted to Congress by the Constitution, Congress had the right to exclude any particular class of persons from traveling in interstate commerce, then if any particular class of persons could be prohibited from traveling from state to state, any person or persons assisting in the transportation of such person could be guilty of a crime. Where, however, there is absolutely nothing in the Constitution authorizing Congress to pass a law prohibiting the migration of persons from state to state who are citizens of this country, regardless how immoral, depraved and degraded they may be, then surely it can be no crime for any person to assist in the obtaining of transportation of such a person.

REGULATION OF COMMERCE DEFINED.

In the Passenger cases, 7 Howard, 283, on page 436, this Court defines "Regulation of Commerce" to mean—"It is the power to regulate; it is to prescribe the rules by which Congress is governed."

DISTINCTION BETWEEN THE LOTTERY CASES AND THE WHITE SLAVERY TRAFFIC.

The power to regulate gives the power to prohibit the importation of transportation of commercial articles, etc. In the Lottery cases, decided in 188 U. S., p. 321, it was held that Congress had the right to stop the carriage of lottery tickets from one state into another, because they were *articles of value*, and the syllabus of said case reads as follows:

(1) "Lottery tickets are subjects of contract among those who choose to buy and sell them, and their carriage by independent carriers from one state to another is therefore interstate commerce which Congress may prohibit under its power to regulate commerce among the several states."

(2) "Legislation under that power may sometimes properly assume the former, or have the effect, of prohibiting."

(3) "Legislation prohibiting the carriage of such tickets is not inconsistent with any limitation or restriction imposed upon the exercise of the powers granted to Congress."

In the Lottery Cases, it was held that lottery tickets being a *promise for money—buying and selling*—was commerce, and same being injurious to the welfare of the people could be prohibited.

An examination of the authorities will show that wherever Congress attempted to prohibit, or did prohibit, the importation of any article or commodity, that in no case of such attempted prohibition—*persons* were prohibited from traveling from place to

place, or even transported from place to place, and the only right that Congress has, under the enumerated powers of the Constitution is in cases of immigration, as the subject of immigration comes under the power of Congress to regulate commerce "with foreign countries."

The argument can not be advanced that Congress has the right to keep any person from traveling from state to state, because the person arriving at his destination *intended* to commit a crime upon his arrival. And if such person did commit a crime upon his arrival in a sister state, the Government of the United States could not assume jurisdiction because such person had traveled over interstate commerce for a criminal purpose. The police power of the state is supreme in such a case.

Even aliens come under the regulation of the police powers of a state as soon as they mingle with and become a part and parcel of the population of the state, and they are subject to the penal laws of such state.

True it is, that under the immigration law now in effect, an immigrant who becomes a criminal may be deported, but this law does not supersede state law punishing the alien for the transgression of the laws of the state.

And thus, in the case of *Keller v. U. S.*, and *Ullman v. U. S.*, 213, U. S., 138, which was a prosecution by the Government of the United States under the Act of Congress of February 20, 1907, which made it a felony for any person to import any woman or girl to come to the United States for the purpose of prostitution, and also making it a felony to harbor alien prostitutes.

Keller and Ullman were convicted for harboring alien prostitutes, and the Supreme Court of the United States held that section of the law unconstitutional, because the offense charged against the de-

fendants was a regulation of a matter within the police power reserved to the state, and not within any power delegated to Congress by the Constitution.

The Syllabus in said case reads as follows:

(1) Speaking generally, the police power is reserved to the states, and there is no grant thereof to Congress in the Constitution.

(2) Notwithstanding the offensiveness of the crime, the courts can not sustain a penal statute if the power to punish the same has not been delegated to Congress by the Constitution.

(3) Where there is collision between the power of a state and that of Congress, the superior authority of the latter prevails. While Congress has power to exclude aliens from, and to prescribe the terms and conditions on which aliens may come into the United States, (*Turner v. Williams*, 194 U. S., 279), that power does not extend to controlling or dealing with aliens after their arrival merely on account of their alienage.

(4) That portion of the Act of Feb. 20, 1907, c. 1134, 34 State, 898, makes it a felony to harbor alien prostitutes, held unconstitutional as to one harboring such a prostitute without knowledge of her alienage or any connection with her coming into the United States, as a regulation of a matter within the police power reserved to the state, and not within any power delegated to the Congress of the United States."

The Court in its opinion on page 144, says:

“While the keeping of a house of ill-fame is offensive to the moral sense, yet that fact must not close the eye to the question whether power to punish therefor is delegated to Congress or is reserved to the state. Jurisdiction over such an offense comes within the accepted definition of the police power. Speaking generally, that power is reserved to the states, for there is in the Constitution no grant thereof to Congress.”

And on page 148, the court says:

“That there is a moral consideration in the special facts of this case, that the act charged is within the scope of the police power, is immaterial, for as stated, there is in the Constitution no grant to Congress of the police powers.”

POWERS OF REGULATION DEFINED.

“The power conferred upon Congress to regulate commerce with foreign nations and among the several states, is the power to prescribe the rules by which such commerce shall be governed—that is, the conditions upon which it shall be conducted; to determine how far it shall be free and untrammelled; how far it shall be burdened by all duties and imposts, and how far it shall be prohibited.”

Encyclopedia of U. S. Sup. Ct. Decisions, Vol. 7, p. 304.

See numerous cases cited.

In the case of *U. S. v. Marigold*, 9 How., p. 559, Syllabus reads as follows:

“Under the power to regulate commerce, Congress can exclude, either partially or wholly, any subject belonging within the *legitimate sphere* of commercial regulation.”

We have seen heretofore that persons are *not* the subject of commerce and not until the Constitution authorizes Congress to pass a law prohibiting persons from traveling from state to state by reason of their circumstances or occupation can such a law under consideration be valid.

FREEDOM OF TRAVEL AND INTERCOURSE CANNOT BE INFRINGED.

Each and every citizen, regardless of his station in life or occupation, has a right to travel from place to place without interference or molestation * * unless such a person has forfeited the protection of the law and is under restraint by the legal authorities for a violation of the laws, and that prostitutes are not subjects of national intercourse can be readily seen in the reading of the opinion of Justice McLean in the *Passenger cases*, 7 How., 283. The learned Justice on page 426 says:

“Paupers, vagabonds and fugitives never have been subjects of rightful national intercourse or of commercial regulations, except in the transportation of them to distant colonies to get rid of them, or as punishment as convicts. They have no rights of national intercourse; no one has a right to transport them, without authority of law, from where they are to an-

other place, and their only rights where they may be are such as the law gives to all men who have not altogether forfeited this protection."

EQUAL PROTECTION OF THE LAWS.

Article XIV of the Amendment to the Constitution of the United States distinctly provides that "no person shall be denied the equal protection of the laws," and therefore, even though a woman or girl may be a prostitute, that not until such time as she shall have been convicted of such offense and under restraint, can any legislative body say that such a person shall not have the right to go from place to place, and having the right of traveling from place to place, it can not be a crime for anyone to assist her.

In the case of *Keller and Ullman*, 213 U. S., hereinbefore cited, Justice Brewer says:

"That moral considerations in the special facts of any case should not be considered, if no authority existed for the enactment of any particular law."

And again we find the rule laid down in the *Encyclopedia of the United States Supreme Court Decisions*, Vol. IX., p. 509:

"The mere fact that an enactment purports to be for the protection of the public safety, health or morals is not conclusive upon the courts, and if the statute purporting to have been enacted to protect the public safety, health or morals has no real or substantial relation to those objects, or that it is a palpable invasion of rights secured by the fundamental law, it

is the duty of the court to look beyond its mere letter and adjudge and thereby give affect to the Constitution.

See numerous decisions cited.

“The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty * * * indeed, are under a things, whenever they enter upon the inquiry or solemn duty * * to look at the substance of whether the Legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, or public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of the rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.”

—Mugler v. Kansas, 123, U. S., 623-661.—

“If the State Legislature, under the pretense of guarding the public health, or public morals, or the public safety, should invade the rights of life, liberty or property, or either rights secured by the supreme law of the land, it would be the duty of the courts to declare such a law unconstitutional.”

—Powell v. Penn., 127 U. S., 678-686.—

The Postal Laws of the United States are amply sufficient to cover cases of such a character. Thus, if Congress would pass a law prohibiting the use of the mails for persons inducing women or girls to go from place to place for the purpose of prostitution, and would prohibit the use of the mails to send such

transportation, such a law would be valid, for as is said in the case *In Re Rapier*, 143 U. S., 110, which was a prosecution by the United States for sending lottery tickets, circulars and newspapers, advertising lotteries, through the mail, Chief Justice Fuller in his opinion on page 134, says:

“The states, before the Union was formed, could establish post-offices and post-roads, and in doing so could bring into play the police power in the protection of their citizens from the use of the means so provided for purposes supposed to exert a demoralizing influence upon the people. When the power to establish post-offices and post-roads was surrendered to Congress, it was as a complete power, and the grant carried with it the right to exercise all of the powers which made that power effective. It is not necessary that Congress should have the power to deal with crime or immorality within the states, nor to maintain that it possesses the power to forfeit the use of the mails in aid of the perpetration of crime and immorality.”

The various states have never surrendered the police power to Congress, and therefore, the law in question is an infringement upon the police powers of the state.

In the case of *King et al v. American Transportation Co.*, 14 Fed. Cases, 512, Syllabus 8 reads as follows:

(8) “Congress has power to legislate over navigation, as well as trade * * over intercourse, as well as traffic * * as to what shall constitute American vessels and the national character of the same, who shall navigate them, and may prescribe rules and regulations for the intercourse and navigation of such vessels

between the different states, but this constitutional grant of power 'to regulate commerce with foreign nations and among the several states,' does not confer upon Congress the authority to extend its legislation and authority over the entire sphere of legislation of the several states."

So we see in this case that Congress has a right to prescribe the rules as to who shall operate trains, the rates to be charged, etc., but it has no power to say what class of people shall not be carried on said trains, unless they be convicted malefactors of the law, under restraint, or undesirable aliens so declared by law.

(9) "Each state has exclusive control of all matters appertaining to its own internal police. It can establish and regulate ferries; control the moving of vessels in its harbors, and enact health and inspection laws. It has the same unlimited jurisdiction over all persons and things within its limits as foreign nations, where that jurisdiction is not surrendered or restrained by the Constitution of the United States.

(10) "Courts have never gone so far in their interpretation of this constitutional power of Congress, as to declare that it is operative upon persons and things upon land within the boundaries of state jurisdiction. It has never been controverted that the rights and duties of persons in relation to property are rightfully prescribed and controlled by the laws of the state within whose limits it is found."

FREEDOM OF SOCIAL INTERCOURSE.

We have endeavored to show that it is not within the province of Congress, or of any legislative body, to restrict or restrain the migration of any person, or their social intercourse.

Section 457 of Freund on Police Power, p. 487, lays down the rule:

"That social intercourse forms a part of constitutional liberty. Therefore, the law can not forbid free citizens to speak or walk or visit with each other."

It has been held in the case of *Ex parte Walter Smith*, 33 L. R. A., 606 (135 Mo., 223), that, "an ordinance forbidding association with thieves, etc., with the intent to agree to commit an offense, or to cheat a person, is an unconstitutional invasion of personal liberty.

The court in its opinion, says:

"This ordinance is now attacked on the ground of its constitutionality in that it invades the right of personal liberty by assuming to forbid that any person should knowingly associate with those who have the reputation of being thieves, etc. And certainly it stands to reason that, if a legislature, either state or municipal, may forbid one to associate with certain classes of persons of unsavory or malodorous reputations, by the same token it may dictate who the associates of anyone may be. But if a legislature may dictate who our associates may be, then what becomes of the constitutional protection of personal liberty, which Blackstone says 'consists in the power

of locomotion, or changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due process of law.' 1 Bl. Com., 134. Obviously, there is no difference in point of legal principle between a legislative or municipal act which forbids certain associations, and one which commands certain associations. We deny the power of any legislative body in this country to choose for our citizens who their associates shall be."

And in the case of *Paralee v. Camden*, 49 Arkansas, 165 (4 South Western, 654), it was held "that a municipality has not the power to make it unlawful for a prostitute to return to that town." And the court in that case said "that a municipality can not make the mere presence of such a person in a town a crime."

In the case of *Millikin v. Weatherford*, 54 Texas, 388, (38 Amer. Rep., 629), it was held that "an ordinance making it unlawful to rent any premises or place within the city limits to any prostitute or lewd woman, was void." The court in that case said:

"That the unfortunate and degraded class against whom the ordinance was mainly intended, however far they may have fallen beneath the true mission of woman, which is one of our highest duties to foster and protect in social and domestic life, are still human beings entitled to shelter and the protection of the law; and the council did not have power to so far prescribe them as a class as to make it a penal offense for any one to rent them a habitation without regard to its use."

Speaking further on the right of citizens to have their social intercourse free from restraint, Freund in Section 457, paragraph 4, p. 488, says:

“The denial of the power of the state follows from the consideration that there must be an intimate social sphere in which the use and development of individual faculties is absolutely inconsistent with the exercise of compulsion, and especially that association with other persons is part of the enjoyment of life, and that the entire separation of different classes, in the absence of specific and individual elements of danger, to be established by due process of law, can not be regarded as necessary to the public welfare, where the theory of equality of rights prevails.”

Section 490 of Freund on Police Power, on page 528, speaking of the right to migrate within the United States, says:

“The right to migrate within the United States is protected against adverse state legislation, because it is one of the privileges and immunities of a citizen of the United States; if so, it ought to protect against federal as well as state legislation, although the Fourteenth Amendment speaks only of the latter; for the privileges secured by the Fourteenth Amendment are fundamental, and fundamental rights under our theory of government can not be abridged by legislation.”

“No attempt has hitherto been made to control by act of Congress the right of citizens to move from place to place or to settle in any place within the United States.”

In the case of *In re Lee Sing et al*, 43 Fed. Rep., 359, it was held:

"That an ordinance enacted by the city of San Francisco known as the 'Bingham Ordinance,' which requires all Chinese inhabitants to remove from the portion of the city thereafter enacted by them, outside the city and county of San Francisco, or to another designated part of the city and county, is void as being in direct conflict with the Constitution, treaties and statutes of the United States, and particularly in the sense that it is discriminating and unequal in its operation, and an arbitrary confiscation of property without due process of law."

Section 491 of Freund on Police Power, on p. 529, speaking on the subject of migration and settlement within a state, says:

"If it is a privilege of a citizen of the United States to move freely within the whole country, the power of the state to control the migration and settlement of its own people within its own territory must logically be denied, for the whole country includes the state. But apart from the federal constitution, the right of each individual to travel about and to choose his residence, must be regarded as an essential part of the liberty which every state constitution guarantees. Experience has shown that governmental interference with the natural movement of population is unwise, oppressive and futile. * * *

"It would not be difficult to find plausible arguments in favor of a policy restraining migration. * * But all such considerations are

outweighed by the great advantage which the individual and directly the state gains from absolute liberty of movement. * * The state may offer inducements to direct migration, and may use the proprietary control which it exercises over public lands for that purpose; but individual liberty is not thereby impaired.

"If legitimate purposes do not justify the impairment of the general liberty of migration and settlement, measures for the separation of classes must be still more obnoxious to the constitution. * * A compulsion of this character will almost invariably be contrary to the equal protection of the laws."

In Section 699, p. 720, Freund says:

"The right to associate with other free citizens is an essential constitutional right, and may be regarded as a privilege of United States citizenship; it should extend to travel on public highways as well as to other social and economic relations; and while such a right may perhaps be in some degree restrained by public exigencies under given conditions, as in case of contagious disease, it is too important and fundamental to yield to a mere sentiment of prejudice."

If, therefore, a person of the class spoken of in the law under consideration, is prohibited from traveling from place to place, which has heretofore been shown can not be done, it would amount to a denial to such person of "the equal protection of the law."

And Freund, in Section 706, page 727, speaking of **EQUAL PROTECTION**, says:

"A similar prohibition rests upon the states in consequence of the Fourteenth

Amendment, which forbids them to deny to *any person* within their jurisdiction the equal protection of the law."

The plaintiffs in error and petitioners, therefore, respectfully submit that the law with which they are charged with violating is unconstitutional, and that the indictment and convictions thereunder should be held to be an absolute nullity.

VARIANCE BETWEEN ALLEGATION AND PROOF IN BOTH CASES.

Another important question arises in the consideration of these cases. In case No. 603, to-wit, Della Bennett, plaintiff in error and petitioner, was indicted and convicted for having caused the transportation in interstate commerce of Opal Clark, and the testimony shows that the true and correct name of the Clark woman is Jeanette Laplante.

(See Page 30 of the Record.)

"Q. So Laplante is your right name now?"

"A. Yes, sir.

Quoting from page 39 of the Record—

"Q. Now, madam, this morning you told me that your right name was Laplante. What is your right first name?"

"A. Jeanette."

"Q. Your right name is Jeanette?"

"A. Yes, sir.

"Q. That is your right maiden name, was it?"

"A. Yes, sir.

"Q. Did you ever go by the name of Nellie?"

"A. I went by that name."

"Q. By how many different names have you gone?"

"A. Just Opal and Nellie."

"Q. And Jeanette?"

"A. Jeanette is my right name."

This question is raised in the fourth and fifth Assignment of Errors in this Court.

In case No. 602, Emma Harris et al, plaintiffs in error and petitioners, v. The United States, it appears that Harris and Green were indicted for having caused the transportation of two women known as Nellie Stover and Stella Larkins. The testimony developed in said case that the right name of the woman known as Stella Larkins was Estelle Bowles. (Page 25 of the record.)

"A. Well, my name is—my right name I went by is Estella Bowles."

And that the woman known as Nellie Stover—that her right name was Myrtle Watson. (Page 37 of the record.)

"Q. What is your real name?"

"A. Myrtle Watson."

In the latter case, to-wit, Harris et al., the variance in the names was not objected to by the then counsel who represented Harris et al., but in view of the fact that this cause is now before this court on a writ of certiorari, as well as on a writ of error, I take the liberty of presenting the legal phases involved in the question of variance, so that if an injustice was done, it may now be corrected. The questions, however, were raised in the Bennett case, and I will therefore argue and brief the questions involved together.

ARGUMENT OF MR. LEVY ON THE SUBJECT OF VARIANCE.

The indictments do not charge that either of the plaintiffs in error and petitioners caused the transportation of Stella Larkins, also known as Estella Bowles, or alias Stella Bowles, and Nellie Stover, also known as Myrtle Watson; or that Della Bennett caused the transportation of Opal Clark, also known as Jeanette Laplante, or alias Jeanette Laplante. The names under which these women went were *assumed and fictitious*. Their assumed names was a fact which could have easily been ascertained by the Government, and their right names put in the indictment.

As a matter of fact, therefore, the defendants below, plaintiffs in error and petitioners here, did not purchase or procure transportation for Nellie Stover, Stella Larkins and Opal Clark as set forth in the indictments.

Objections were raised at the trial against the admission of testimony concerning the women whose names appeared in the indictments when their true names became known. The objections were overruled and exceptions taken.

We therefore submit that there was a material variance between the facts alleged in the indictments and the proof submitted in the cases, and that an instructed verdict for acquittal should have been given.

In the case of Goodlove v. State, 82 Ohio State page 365, it was held:

"An allegation in an indictment is material, when * * where an indictment charges the accused with having assaulted and killed one 'Percy Stuckey alias Frank McCormick,' evidence that a person commonly known as Frank McCormick was assaulted and killed

will not sustain a verdict of guilt, unless it is shown that Frank McCormick and Percy Stuckey were the same person."

In the case above cited, Goodlove was indicted for having killed one Percy Stuckey, alias Frank McCormick. The evidence in that case shows that it was Frank McCormick who was killed and not Percy Stuckey.

In the case under consideration, the evidence shows that it was Estella Bowles, and not Stella Larkins; Myrtle Watson and not Nellie Stover, who were caused to be transported by Green and Harris, and that it was Jeanette Laplante and not Opal Clark who was caused to be transported by Della Bennett.

We do not think that it will be seriously controverted that the *correct names* of the persons transported must be alleged in the indictments. The reason for the rule is entirely plain. For should an accused be charged with transporting—say Mary Smith—and it appeared in the evidence that it was Susie Jones instead of Mary Smith that was transported, an acquittal would not be a bar to a prosecution for transporting Mary Smith. If convicted and sent to the penitentiary, after serving her term, the plaintiff in error could be brought back and tried for the transporting of Susie Jones.

There are numerous authorities on that subject, and same can be found in the brief submitted by the plaintiff in error in the case of Goodlove v. State, 82 Ohio State, page 367. And to quote from the decision of Justice Crew of the Supreme Court of Ohio, who rendered the opinion in said case, on page 374:

"The rule being well settled that no allegation in an indictment descriptive of that which is essential to the charge can be disregarded or rejected, the crime thus charged in this indictment is not made out or established by proof,

only that the accused assaulted and killed one Frank McCormick, there being no evidence whatever to show that said Frank McCormick and Percy Stuckey were one and the same person."

The defendant in this case was discharged.

VARIANCE IN NAMES.

"A variance between the name of a person as alleged and as it is proved, whether it be the name of the person assaulted or killed, or of the person who owned the property which was the subject of the crime, has been held fatal."

— Underhill on Criminal Evidence, 2d Ed., Section 33.—

See numerous decisions cited.

"Identity of the deceased that the party named in the indictment must be proved beyond a reasonable doubt * * *the name must be proved as alleged.* Failure to prove the Christian name of the deceased is fatal."

Underhill Criminal Evidence, 2d Ed., Section 316.

Elliott on Evidence, Section 2715.

Penrod v. People, 89 Ill., 150, 151.

"The identity of the stolen property must be established substantially as laid in the indictment. Where cattle are described by age, color, species or brand, these details become material, and a variance is fatal."

Underhill on Criminal Evidence, 2d Ed., Section 296.

Hodnett v. State, 117 Georgia, 705.

Wharton Criminal Evidence, Section 124.

See other numerous cases cited in Underhill.

* * "Where the proof fails to support the allegations, not in some particulars only, but in their entire scope and meaning, and if the divergence extends to such an important fact, or group of facts, that the cause of action or defence as proved would be another than that set up in the pleadings, it is not a variance, but a failure of proof which can not be cured by amendment and the action must be dismissed."

Jones on Evidence, Section 234, pp. 295, 296.

See numerous cases cited by Jones.

The plaintiffs in error and petitioners in this case did not know any such persons who are mentioned in the indictment as having been transported, etc. The indictment does not apprise them of the fact that the persons who are named in the indictments were known by any other name. There is therefore a material variance, and the plaintiffs in error and petitioners should be discharged.

NO TESTIMONY AGAINST EMMA HARRIS.

We respectfully submit to the Court, that an examination of all of the testimony offered by the Government against Emma Harris, alias Emma R. Smith, in case No. 602, will establish the fact that no incriminating testimony of any kind was produced by the Government against Emma Harris. Neither one of the prosecuting witnesses had ever heard of Emma Harris, nor had seen her, until they had come

to the city of Cincinnati at the alleged solicitation of Bessie Green, co-defendant of Emma Harris. Harris was an utter stranger to the prosecuting witnesses, and the crime, if any were committed, was committed by Bessie Green alone when she counselled, advised and aided the two women to come from the city of Charleston, West Virginia, to Cincinnati, Ohio. There is no testimony to the effect that Green was the agent of Harris.

The indictment does not allege that Harris and Green were conspirators, or were acting jointly, and the court permitted over the objection of Harris, testimony to be introduced as to conversations and acts between the prosecuting witnesses and the defendant Green as affecting the guilt of Harris, to which exception was reserved, as is found on page 21 of the Record.

A grave injustice was therefore done Emma Harris. Crimes with which the plaintiffs in error and petitioners were charged are necessarily of such a heinous nature that anyone whose name might even be mentioned in a casual way in connection therewith, stands in a peculiarly bad light before the court or jury who is called upon to pass judgment. Hence, extreme caution should be exercised by the court that no testimony be submitted to the jury affecting the guilt of one co-defendant as to prejudice the rights of the other co-defendant, unless the court caution the jury that the testimony so submitted can only affect the guilt of the person against whom it is offered.

The evidence in this case seems to show that Bessie Green went to Charleston, West Virginia, and there met the women known as Stella Larkins and Nellie Stover; that the Green woman after arriving at Charleston became dissatisfied and determined to return to Cincinnati, and she made the acquaintance of Larkins and Stover, and they having heard that Green was to return to Cincinnati and was leading

the same sort of a life that Larkins and Stover were engaged in, determined to accompany Green to Cincinnati. Larkins and Stover testified that they did not have sufficient money to pay their own fare, and that it was paid by Green. That their trunks were subsequently sent to Cincinnati, C. O. D., and the collection charges were paid by Emma Harris some few days after Larkins and Stover had arrived at Cincinnati and had become inmates of the Harris house.

As before stated, Harris did not send Green to see these women. Harris did not know either Larkins or Stover, and the first time she met them was several hours after they arrived at her house.

Where then is there any testimony to show that Emma Harris either aided, counselled or advised or assisted in procuring transportation for said women, or procured the transportation for them? We therefore submit that if the court should hold the law in question constitutional, that upon the testimony in said case, the court ought to discharge Emma Harris, alias Emma R. Smith.

The women, Larkins and Stover, *came here voluntarily*. The testimony shows that they had intended to come to Cincinnati some time before they met the Green woman. Larkins testified on page 27—

“My intention was to come to Cincinnati, but it wasn't right then; I was coming to Cincinnati later on, but I had no idea of going right then.”

“Q. But you had made up your mind before you met that girl (referring to Green) to come to Cincinnati?”

“A. Yes, sir; I did.”

“Q. That was of your own free will that you had reached that conclusion?”

“A. Yes, sir; I did.”

On page 30, Larkins testifies that she had testified before the United States Commissioner as follows:

"Well, I was out, and when I went in I met her (referring to Green), and so we had a talk for a little while, and of course, I wanted to come to Cincinnati * * my intentions were to go to Cincinnati before this, and I just fixed and came on."

On page 30—

"Q. Now, I will ask you if you didn't testify on that same occasion,

"Q. Where did she say to come to? (Referring to conversation with Green?)"

"A. She didn't mention any name."

"Q. Did she mention Emma Harris?"

"A. No."

"Q. Did you so testify?"

"A. Yes, sir; I guess I did."

"Q. Now, when you were asked about your tickets, didn't you testify as follows:

"Q. Was Nellie with you at that time?"

"A. Yes, sir."

"Q. Who bought her ticket for her?"

"A. I don't know; I just bought my own ticket; I don't know who bought it for her."

"Q. You were acquainted with Nellie (meaning Nellie Stover) before you came to Cincinnati?"

"A. No, sir; I seen her once or twice."

"Q. But, you weren't friends?"

"A. No, sir."

"Q. Did you so testify?"

"A. Yes, sir; I did."

On page 31, the witness Stella Larkins was asked:

"Q. Now, I will ask you, if you ever received any communication from the other defendant, Mrs. Harris?"

"A. From her?"

"Q. Yes."

"A. Not before."

"Q. I mean while you were up there?"

"A. While I was in Charleston?"

"Q. Any letters, or anything?"

"A. No, sir; I never."

"Q. Didn't you also testify before—

"Q. Now, you never got any letter, or any paper, or any kind of communication from Mrs. Harris?"

"A. No, sir; I never."

The witness, Nellie Stover, testifies on page 39—

"Q. Did she hold out any inducements for you to come, of any kind (referring to Bessie Green.)"

"A. No, sir."

"Q. Or any promises?"

"A. No, sir."

"Q. It was all done on your own part; you wanted to come, didn't you?"

"A. Yes."

"Q. You never knew Mrs. Harris until you came to Cincinnati?"

"A. No; I didn't."

The testimony of Nellie Stover disclosed the fact that the Stover woman looked up the Green woman

while she was at Charleston, and the Stover woman accompanied Green to Cincinnati, not at the solicitation of Green, but through Stover's own free will.

On page 40, the following questions were asked of Stover:

"Q. Now I want to ask you if the night she was there at the house you telephoned to her?"

"A. Yes, I telephoned to her."

"Q. How many times did you telephone to her?"

"A. Twice."

"Q. That was about coming to Cincinnati, was it?"

"A. I telephoned to her and asked her if she was ready."

"Q. What?"

"A. I telephoned to her and asked her if she was ready, and when I must get ready."

"Q. Well, you wanted to come?"

"A. Sure I wanted to come after she came there, and I told her I wanted to come."

"Q. Well, she talked to you about Cincinnati?"

"A. Not much about Cincinnati until after we got there."

It can therefore be seen by the testimony of the prosecuting witnesses that there is an absolute failure of proof as to the culpability of the Harris woman, and in addition thereto, we have the testimony of Bessie Green, co-defendant of Emma Harris, in which she expressly says that Harris is absolutely guiltless.

Green testified on page 47 that she became dissatisfied with the Harris house, of which she was an inmate, and left, going to Covington, Kentucky, and from there to Charleston, West Virginia.

"Q. Did you tell Mrs. Harris that you were going to Charleston?"

"A. No, sir.

"Q. Did Mrs. Harris give you any money when you left?"

"A. No, sir."

"Q. Ask you to get any girls?"

"A. No, sir."

"Q. Did Mrs. Harris know where you were going?"

"A. No, sir.

The Green woman further testified that when she got to Charleston, she became an inmate of Brown's sporting house (p. 48, Record No. 602), and from Brown's sporting house she went to Anna Parker's sporting house, and it was in these two houses that she met the prosecuting witnesses. That she, (Green) became dissatisfied with conditions in Charleston and determined to return to Cincinnati, and in the general talk which followed the two prosecuting witnesses decided to accompany her to Cincinnati. There is a conflict in the testimony as to who paid the railroad fare, etc., but there can be no conflict in the testimony that the prosecuting witnesses came to Cincinnati *voluntarily*, and there can be no conflict in the testimony that neither of the prosecuting witnesses knew Harris or had ever heard of her, or had met her before they arrived in Cincinnati, and there is absolutely no testimony to the effect that Harris had anything to do with the coming of the prosecuting witnesses to her house.

The defendant Harris, testifies on page 42, that the Green woman left her home without stating where she was going; that she gave her no money with which to get girls, or for any other purpose; and that she had never met the girls until they arrived in her home.

It can therefore be readily seen by a careful reading of the testimony in the Harris case that the verdict of guilty is not justified by the facts; that her guilt was not established beyond a reasonable doubt; and even should the Court find the White Slave law constitutional, that Emma Harris should be discharged for failure of proof against her.

SEVERE SENTENCE IMPOSED ON HARRIS.

Notwithstanding that the testimony against Emma Harris failed to prove her guilt beyond a reasonable doubt, the Court imposed on her a sentence of *four years of hard labor in the Penitentiary* and I respectfully submit to the Court that the sentence imposed on Harris is not justified by the facts and in my humble opinion, entirely too severe.

That there is no evidence against Harris can be noticed from the reading of this brief and the record. The Government, however, contended that the evidence established that Green was the agent of Harris, and that her guilt was proven by circumstantial evidence. Harris and Green both emphatically denied such an imputation, and I respectfully call the Court's attention to the fact that the cardinal rule for the interpretation of circumstantial evidence is—

“When the facts relied upon are equally capable of two interpretations, one of which is consistent with the defendant's innocence, they will not be sufficient to establish guilt.”

THE CASE AGAINST DELLA BENNETT ANALYZED.

Among the assignment of errors in the case of Della Bennett, plaintiff in error and petitioner, v. The United States of America, are the following:

"4th. Said Circuit Court of Appeals erred in overruling the 24th Assignment of Error upon the record in said cause."

The 24th assignment of error, herein spoken of, relates to the motion made by Della Bennett at the conclusion of the testimony for the Government, on page 51, that the Court instruct the jury to return a verdict of "not guilty" against her on the second count of the indictment for the reason that the second count of the indictment alleges that the tickets were procured at Chicago, Illinois; whereas the testimony shows that the tickets were procured, if any were procured, in the city of Cincinnati. This motion was overruled and exception noted. (p. 51 of the Record.)

ARGUMENT OF MR. LEVY ON THE ABOVE PROPOSITION.

The second count of the indictment against the said Della Bennett, reads:

"And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid do further present that Della Bennett, on or about, to-wit, the twenty-ninth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton in the State of Ohio, in the Western Division of the Southern District of Ohio, and within the jurisdiction of this Court, did then and there unlawfully and knowingly produce and obtain, and cause to be procured and obtained in the City of Chicago in the State of Illinois, two certain railroad passenger tickets from the Cleveland, Cincinnati, Chicago and St Louis Railway Company, then there a common carrier of passengers engaged

in interstate commerce; each of which said tickets was then and there good for transportation for one person from said City of Chicago in the State of Illinois to the City of Cincinnati in the State of Ohio, upon and over the line and railroad route of said Railway Company,—with the purpose and intention that said tickets should be used by two certain women, to-wit, Opal Clark and Eva Parks, in interstate commerce, to-wit, in going from said City of Chicago in the State of Illinois, to said City of Cincinnati, in said State of Ohio, for the purpose of prostitution.” * * *

Opal Clark, the prosecuting witness, testified on pages 24, 25 and 26, that she received telegrams from Bennett that Bennett would send her tickets.

“A. Yes, sir, the tickets were sent. A telegram came then saying that the tickets were at the depot.”

“Q. Did you go to the depot?”

“A. Yes, sir.

“Q. What depot?”

“A. Big Four.”

“Q. In what city?”

“A. Chicago.”

“Q. Did you get anything there?”

“A. Yes, sir.”

“Q. What did you get there?”

“A. Two tickets.”

“Q. For what?”

“A. To come to Cincinnati.”

“Q. By what line; on what road?”

“A. Big Four.”

Walter J. Wood, ticket seller, Big Four Railway, Cincinnati, testifies on pages 46 and 47, that the

tickets sent to the Clark woman were purchased in Cincinnati. Wood and Clark were both witnesses for the Government.

We therefore submit that the motion to instruct the jury to return a verdict of "not guilty" in the second count of the indictment should have been granted, as there was a material variance between the allegation and the proof.

Underhill on Criminal Evidence, 2nd Ed., Sec. 33.

Underhill on Criminal Evidence, 2d Ed., Sec. 316.

Underhill on Criminal Evidence, 2d Ed., Sec. 296.

Elliott on Evidence, Section 2715.

Wharton on Criminal Evidence, Section 124.

Jones on Evidence, Section 234.

Penrod v. People, 89 Ill., 150.

Hodnett v. State, 117 Georgia, 705.

We further call the Court's attention to the fact that the indictment against Della Bennett alleges that the said Della Bennett persuaded, induced, enticed and caused two women to be transported, to-wit, Opal Clark and Eva Parks. * * *

A careful reading of all of the testimony against Bennett, develops that not one iota of testimony was introduced as to the guilt of Bennett in relation to the Parks woman. In fact, the only testimony to connect Bennett with the transportation of the Parks woman was that given by the prosecuting witness, Clark, who testified that she (the Clark woman) was responsible for the coming to Cincinnati of Eva Parks

Testimony of Opal Clark, page 25:

"Q. What did you say to her in your last letter referred to?"

"A. I told her I didn't know whether I could bring any girls or not, but I would try."

"Q. What did you do with reference to bringing girls?"

"A. I just told my friend I was coming, and she said she was coming, too."

"Q. Who was your friend?"

"A. Eva Parks."

On page 44, in the cross-examination of Opal Clark, she testified as follows:

"Q. Now, then, this Grace Parks, she had never been an inmate of Della Bennett's house before that time, had she?"

"A. No, sir."

"Q. Did you ask her to come with you?"

"A. No, sir."

"Q. How did she happen to come?"

"A. I told her I was coming."

"Q. And she wanted to come along with you?"

"A. Yes, sir."

"Q. She had never met Della Bennett, had she?"

"A. No, sir."

It is to be noted that the Parks woman was not called as a witness, and taking into consideration all of the testimony—there being a failure of proof against Della Bennett—an instruction should have been given for her acquittal.

There is also a total failure of proof that the said Eva Parks came to the City of Cincinnati for the purpose alleged in the indictment.

The 7th, 8th and 9th assignment of errors in this cause alleged that the Circuit Court of Appeals erred in not sustaining the 34th, 35th and 36th assignment of errors.

The 34th, 35th and 36th assignment of errors in the Court of Appeals, which are the 7th, 8th and 9th assignment of errors in this Court, were special charges requested by Della Bennett to be given to the jury, which were refused by the Court and exceptions taken.

The special charges requested under the 7th assignment of errors is as follows:

"If the jury find from the testimony that either of the women, to-wit, Opal Clark or Eva Parks, were not transported for the purpose of prostitution from Chicago, Illinois, to Cincinnati, Ohio, as is charged against the defendant in the first count of the indictment, it is your duty to acquit the defendant on said first count of the indictment."

I submit that under the testimony given in said cause, that the above instruction should have been given by the Court, in view of the fact that the Clark woman testified on page 43, that she and the Parks woman intended to go on the stage in Cincinnati and Toledo.

The 8th assignment of errors in this cause was the refusal of the trial court to give the following special charge:

"The defendant is charged in the third count of the indictment with unlawfully and knowingly persuading, inducing, enticing and caused to be persuaded, induced and enticed two certain women, to-wit, Opal Clark and Eva Parks, to go from Chicago, Ill., to the City of Cincinnati, Ohio, in interstate commerce for the purpose of prostitution and intention on the part of the defendant that each of said

women, to-wit, Opal Clark and Eva Parks, should engage in the acts of prostitution in the City of Cincinnati. If the jury find from the testimony that the defendant did not persuade, induce and entice, or cause to be persuaded, induced and enticed the two women mentioned, to-wit, Opal Clark and Eva Parks, to come from Chicago, Illinois, to the City of Cincinnati, Ohio, for said unlawful purpose, it is your duty to acquit the defendant."

Exception was taken to the refusal of the Court to give said special charge, and I respectfully submit that it is prejudicial error not to have given said charge, for the question to have been determined by the jury was the *intent* of the defendant and her motive in transporting the two women, if she did transport them.

The 9th assignment of errors is the refusal of the Court in giving the following special charge to the jury:—

"If the jury find from the testimony that only one woman was transported, or that the defendant was guilty of the acts charged in all three counts of the indictment against one woman who is mentioned in the indictment and not against both, it is your duty to acquit the defendant under all counts of the indictment."

There having been a complete failure of proof as to the culpability of the defendant Bennett with regard to Eva Parks and no testimony having been adduced to prove her guilt in reference to the Parks woman, she was certainly entitled to be acquitted. The Bennett woman was charged in one indictment with having committed two offenses, two separate and distinct crimes, to-wit, the transportation of two specific woman, and notwithstanding that no evi-

dence was adduced to prove her guilt, the jury under instructions from the Court in its general charge, found the Bennett woman guilty on all of the counts of the indictment.

The Court in its general charge, on page 67, charged the jury as follows:

"All three counts of the indictment charge offences against the defendant with respect to two women, Opal Clark and Eva Parks. There was *no evidence* tending to show that the defendant had anything to do with Eva Parks with respect to inducing her of her own act—the defendant of her own act—inducing the woman Eva Parks, or enticing, or persuading her to come to the City of Cincinnati. I charge you, gentlemen, in that respect, that the averment of the offences charged against the defendant is first: in causing to be transported the two women for the purposes alleged; secondly, of furnishing transportation—of furnishing tickets in the language of the indictment—procuring or obtaining any ticket, or tickets, or any form of transportation; and thirdly, inducing, or persuading or enticing them to come. I may say in that connection, that if it should appear from the testimony; that if you should be of the opinion from the testimony, that only one of these women is concerned with any of the offences charged against this defendant, that that would be sufficient to maintain the claim of the Government; that is to say, it is not necessary it should be proved beyond a reasonable doubt that the defendant was guilty of each one of these offences charged in the indictment with respect to the two, if you judge from the testimony that one of the women was the subject of what the defendant did with respect to what is charged in all of the

offences charged in the indictment, or with respect to only one, or only two of them." * * *

I therefore respectfully submit that it was error in not giving the special charge requested, and owing to the manner in which the Court charged the jury in its general charge, as hereinbefore quoted, the defendant was prejudiced and it unquestionably led to her conviction, notwithstanding the total failure of proof as to the Parks woman which the trial court admits in the charge hereinbefore referred to.

OPAL CLARK A PARTICEPS CRIMINIS AND ACCOMPLICE

The woman known as Opal Clark, prosecuting witness against Della Bennett, held the center of the stage throughout the trial of the Bennett case. A careful reading of her testimony will convince any unprejudiced mind that a lower, more depraved and degraded character than the Clark woman cannot be found anywhere; that she has associated with thieves and harlots for many years; that she has been an inmate of a resort where the panel game was worked and men were robbed; that she was addicted to the use of morphine and other dangerous drugs; that when she came to the City of Cincinnati, she, the said Clark woman, whose name as a matter of fact was Jeanette Laplante, induced and persuaded the Parks woman to come with her to Cincinnati; that from the testimony hereinbefore referred to, it is evident that the Parks woman was an utter stranger to Della Bennett; that there were absolutely no communications of any character between Bennett and Parks, and that therefore the only person who was guilty of a crime under the statute as against the Parks woman was Clark and not Della Bennett

The Clark woman is therefore a *particeps criminis* and an *accomplice*. She was not indicted for the crime, and a careful perusal of all of the testimony will establish the fact that the testimony given by the Clark woman against Della Bennett is not corroborated, and it was therefore the duty of the Court to charge the jury not to convict Bennett unless the testimony of the Clark woman was corroborated.

The Court in its general charge to the jury upon that subject, charged the jury on page 67, as follows:

“There is evidence tending to show that the woman Clark was directed to do certain things —was directed to do these things which are charged in each one of the counts of the indictment. Now if you should find that to be true from the testimony, then, I charge you that Opal Clark—with respect to Eva Parks, the other woman whose name is used in this indictment, was an accomplice of the defendant, that is to say, one who was accessary to the offence, either before or after the act and was a participant in the offence as charged. If you should find that that was so, then she was an accomplice—and under the definition of that term, gentlemen, I charge you that it is never safe to convict a person charged with a felony upon the uncorroborated testimony of an accomplice —necessarily, if you find that she was an accomplice with respect to these charges or any of them, you will necessarily then have to inquire into the facts as to whether or not there is corroborating testimony.

“*There is evidence tending to corroborate her testimony* and it is for you to consider its force and value and the weight to give to it.”

I respectfully submit that the last paragraph of the charge given by the Court, to-wit, “There is evi-

dence tending to corroborate her testimony" is erroneous, as the Court instructed the jury that there *was* corroborating evidence, when the Court should have charged the jury that it was for them to ascertain from the testimony whether or not there was corroborating testimony.

The Court does not in its charge discuss the evidence, and the jury took it for granted that there was corroborating testimony because the Court said so, and thereby Bennett was materially prejudiced.

"Syllabus 3. "A charge which magnifies and distorts the proving power of the facts on the subject of concealment, and makes the weight of the evidence depend on the manner in which it was done, and with the context of the charge, practically instructs that the facts were, under both divine and human law, conclusive proof of guilt—is erroneous.

"Syllabus 4. An instruction which is tantamount to saying to the jury that flight creates a legal presumption of guilt, so strong and so conclusive that it is their duty to act on it as an axiomatic truth, is erroneous, although qualified by words that there may be exceptions to the rule."

—Hickory v. United States, 160 U. S., p. 408.—

In the case of Reagan v. United States, 157 U. S., 299, Justice Brewer delivering the opinion of the Court on page 310, says:

"The court should be impartial between the government and the defendant. On behalf of the defendant it is its duty to caution the jury not to convict upon the uncorroborated testimony of an accomplice. Indeed, according to some authorities, it should peremptorily

instruct that no verdict of guilty can be founded on such uncorroborated testimony, and this because the inducements * * * to falsehood on the part of an accomplice are so great. And if any other witness for the government is disclosed to have great feeling or large interest against the defendant, the court may, in the interests of justice, call the attention of the jury to the extent of that feeling or interest as affecting his credibility."

In the case of *Starr v. United States*, 153 U. S., page 612, Syllabus 4 reads as follows:

"Expression of opinion by the court to the jury should be so guarded as to leave the jury free in the exercise of their own judgment."

Chief Justice Fuller, delivering the opinion of the Court on page 624 and 625, uses the following language:

"It is true that in the Federal courts the rule that obtains is similar to that in the English courts, and the presiding judge may, if in his discretion he thinks proper, sum up the facts to the jury; and if no rule of law is incorrectly stated, and the matters of fact are ultimately submitted to the determination of the jury, it has been held that an expression of opinion upon the facts is not reviewable on error. (Citing quotations). But he should take care to separate the law from the facts and to leave the latter in unequivocal terms to the judgment of the jury as their true and peculiar province. (Citing quotations). As the jurors are the triers of facts, expressions of opinion by the Court should be so guarded as to leave the jury free in the exercise of their own judgments." * * *

Quoting again from the opinion of Chief Justice Fuller in said case on page 626:—

“It is obvious that under any system of jury trials, the influence of the trial judge on the jury is necessarily and properly of great weight, and that his lightest word or intimation is received with deference, and may prove controlling.”

I therefore submit that the charge of the trial court on the subject of *corroboration* is prejudicial error.

CONCLUSION.

Under the statement of facts and law referred to in this brief, I respectfully submit that the conviction of the plaintiffs in error and petitioners should be set aside and held for naught.

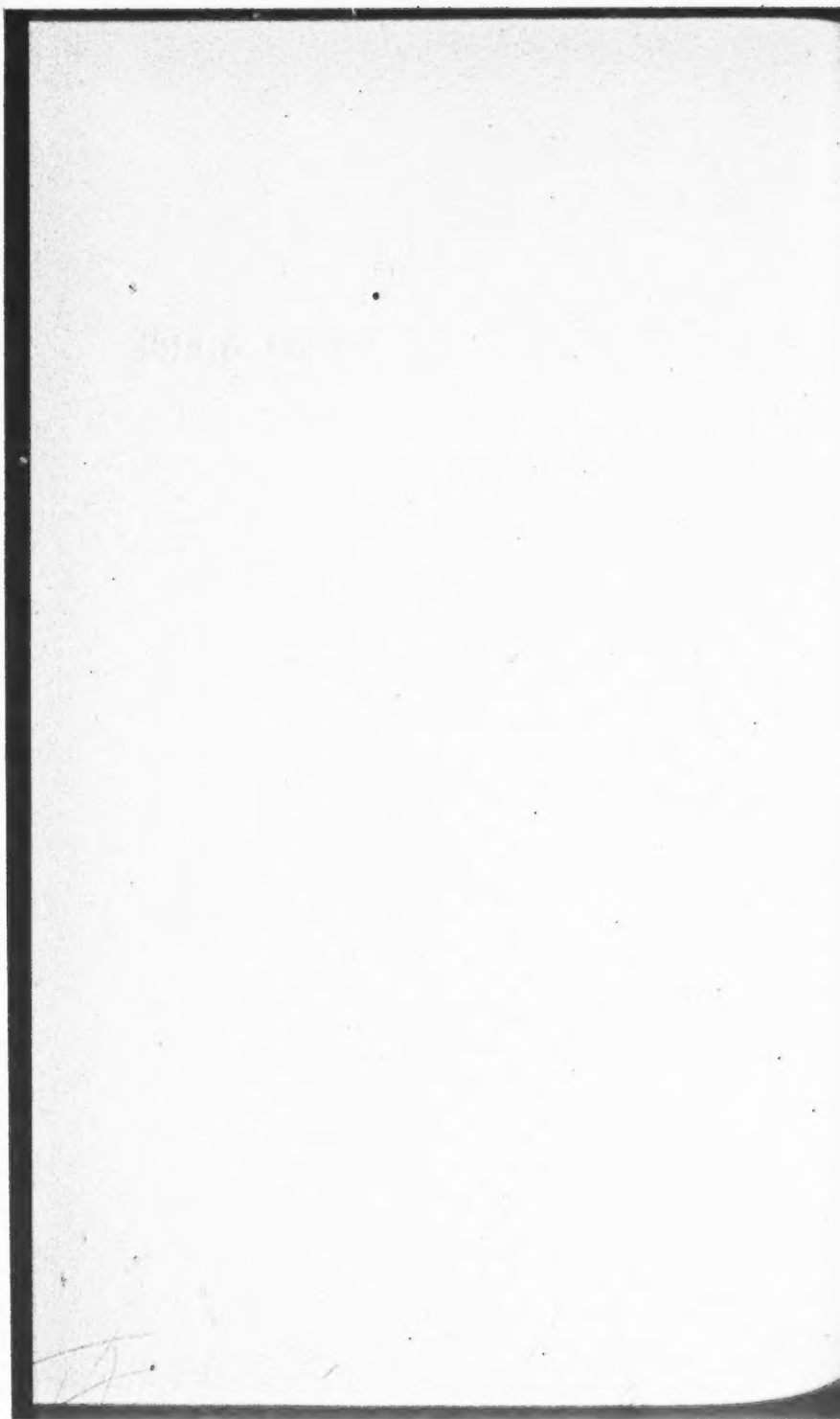
Respectfully submitted,

MAX LEVY,

Counsel for Emma Harris, alias Emma R. Smith and Bessie Green, Cause No. 602; and Della Bennett, Cause No. 603, Plaintiffs in Error and Petitioners.

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Supreme Court of the United States

*Emma Harris, alias Emma R. Smith and
Bessie Green,*

Plaintiffs in Error and Petitioners

vs.

The United States of America.

No. 602

Della Bennett,

Plaintiff in Error and Petitioner

vs.

The United States of America.

No. 603

Reply. Brief of Plaintiffs in Error and Petitioners.

The Government, through the Assistant Attorney General, in its brief, cites the reasons for the enactment of the White Slave Traffic Act by reciting the history and purposes of said Act.

As was well said by a majority of the committees who reported the Bill—

“It does not attempt to regulate the practice of voluntary prostitution, but aims absolutely to prevent *panderers* and *procurers* from compelling thousands of women and girls *against their will and desire* to enter and continue in a life of prostitution. * * *

The committees further reported—

* * * Investigations conducted by Government agents disclose the fact that a national and international traffic exists in the buying, selling and exploitation of women and young girls for immoral purposes. This traffic has come to be known the world over as “The White Slave Trade”. It is referred to by the Paris Conference as “The Trade in White Women”.

Said reports further refer to the fact that these women

* * * are *compelled* to live a life of immorality by men who are in the business of procuring women for that purpose—by men whose sole means of livelihood is the money received by the sale of exploitation of the women who are engaged in that unfortunate life * * *

The Committees term “White Slaves” as

* * * those women and girls who are *literally slaves* * * * those women who are owned and held as property, chattels—whose lives are lives of involuntary servitude.”

I am in absolute sympathy with laws that would be enacted to stop such nefarious practices, as are detailed in the foregoing history, etc. However, a careful examination of the so-called “White Slave Statute” fails to discover how under Sections 2 and 3 of said Act such a practice can be broken up. No provision is found in these Sections for the punishment of panderers and procurers.

If it were the intention of the framers of the Act to protect the innocent and virtuous, they did not so say in said law, for a careful examination of the records in cases 602 and 603 conclusively shows that the women and girls who were transported, traveled

voluntarily, and had voluntarily engaged in the business of prostitution for many years, and that neither of the parties who were convicted for their transportation were in any way responsible for the life they were living.

The Assistant General in his brief on page 13, in the last paragraph, refers to cases 602 and 603 and very adroitly uses the expression that the women transported were practically "peons". That this is a most unwarranted statement can readily be seen by the reading of the testimony. These are Ohio cases, and the Statutes of Ohio distinctly make it an offense to retain the clothing or property of any inmate of a house of prostitution. (Sec. 13031-5, Revised Statutes of Ohio.)

Ohio has a similar White Slave Act to the one in question, which reads as follows:

WHITE SLAVE TRAFFIC—PENALTY.

Section 13031-6 "Any person who shall knowingly transport, or cause to be transported, or aid or assist in obtaining transportation for, by any means or conveyance, through or across this state, any female against her will for the purpose of prostitution, or with the intent or purpose to induce, entice or compel, any female to become a prostitute, shall be guilty of a felony and upon conviction thereof be imprisoned in the penitentiary not less than three years nor more than ten years. Any person who shall commit the crime in this Section mentioned may be prosecuted, indicted, tried and convicted in any county or city in or through which he shall so transport or attempt to transport any female as aforesaid."

That panderers and procurers are severely punished under the laws of Ohio can be seen by reading the following Section:

PANDERING DEFINED—PENALTY.

Section 13031-1 "Any person who takes places, harbors, inveigles, entices, persuades, encourages, either by threats, or promises, or by any device or scheme, takes or places or causes to be taken or placed, any female into a house of ill-fame or of assignation or elsewhere, against her will, for the purpose of prostitution or illegal sexual intercourse, or takes or detains a female unlawfully against her will with the intent to compel her by force, threats, persuasion, menace or duress to marry him or marry any other person or to be defiled, or any person who being parent, guardian, or having legal charge of the person of a female, consents to her taking or detention by any person for the purpose of prostitution or illegal sexual intercourse, shall be guilty of pandering, and upon conviction shall be punished by imprisonment in the penitentiary for a term of not less than two nor more than twelve years and fined not more than \$5,000."

Section 13031-2. "Any person who shall place any female against her will in the charge or custody of any person or persons for immoral purposes or in a house of prostitution with the intent that she shall live a life of prostitution, or any person who shall compel any female to reside with him or with any other person for immoral purposes, or for the purpose of prostitution, or compel her to live a life of prostitution, is guilty of pandering, and upon conviction shall be punished by imprisonment in the penitentiary not less than one year nor more than ten years, and be fined not more than \$1,000."

Section 13031-3. "Any person who shall receive any money or other valuable thing for or on account of procuring for or placing in a house of prostitution or elsewhere any female against her will for the purpose of causing her to co-habit with any male person or persons, shall be guilty

of a felony and upon conviction thereof shall be imprisoned in the penitentiary not less than three nor more than ten years."

Section 13031-4 "Any person who by force, fraud, intimidation or threats, places or leaves, or procures any other person or persons to place or leave his wife in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary not less than three nor more than ten years."

Section 13031-5. "Any person or persons who attempts to detain any girl or woman in a disorderly house or house of prostitution *because of debt or debts she has contracted*, while living in said house, shall be guilty of a felony and upon conviction thereof shall be imprisoned in the penitentiary not less than three nor more than ten years."

The above laws of Ohio are quoted in detail in order to show that the police powers of the state, especially Ohio, (and I am reliably informed nearly every other state in the Union has similar laws) are ample and sufficient to protect all females against the rascality of panderers and procurers, and that it is unnecessary for Congress to aid the police powers of the state.

NOT NECESSARY TO AID STATES.

The Government in its brief on page 23, paragraph 2, says:

"The Act is not an encroachment upon the police powers of the states. It merely aids the states in the enforcement of their own laws on the subject of immorality, prohibiting that which the state can reach, if at all, only in part, for while the state might prohibit immoral practice within its limits, its power to prevent the introduction of immoral persons is limited."

It can therefore be readily seen from the citation of the Ohio Statutes that the State of Ohio is competent to take care of its citizens, and that the expression of the Government that the prosecuting witnesses in cases 602 and 603 were "peons" is not borne out by the facts, because peonage is impossible under the laws of Ohio, especially under Section 13031-5, hereinbefore cited.

PEONAGE—DEFINED.

I respectfully call the court's attention to the definition of "peonage." In the case of *United States v. Clement*, 171 Federal Reporter, page 974, it is defined as "the holding of persons in unwilling servitude in the payment of debts, by means of force and intimidation."

In the case of *Bailey v. The State of Alabama*, 219 U. S., page 219, this Court defined a "peon" as "one who is compelled to work for his creditor until his debt is paid".

"Peonage" is defined by Webster as "a form of serfdom".

As was pointed out in the oral arguments, the offense consists in entertaining "lascivious thoughts." "Mere conversations" although held within the confines of state limits are punishable under this Act.

The Government in its brief on page 16, states several propositions—

First—The Transportation and Transit of Persons is Commerce.

ANSWER TO THE FIRST PROPOSITION.

I agree with the Government that the *business* of transporting persons interstate is commerce to the extent that he who engages in such a vocation for *commercial* purposes comes under interstate commerce regulations.

Second—The Government lays down a second proposition to the effect:

“That a *regulative* power of Congress extends to the absolute prohibiting of the transportation and transit in interstate or foreign commerce of *certain subjects of commerce.*”

ANSWER TO THE SECOND PROPOSITION.

I agree that Congress has the right to prohibit the transportation and transit in interstate or foreign commerce of *certain subjects of commerce.* In using the words “*certain subjects of commerce,*” I am merely repeating the language of the Government. This Court has held repeatedly that the true test as to whether or not the subject, article or commodity comes under interstate commerce regulation is whether or not the subject, article or commodity is *merchantable, whether it has a money value, or whether it is subject to barter or trade.*

Most emphatically do I deny, however, that the mere aiding of a person, such as the procuring of a railroad ticket, or the lending of money to a traveler with which to purchase a ticket, (which is a mere incident) comes under interstate commerce regulations, for as was well said by Mr. Justice White in the case of *Hooper v. California*, 15 Supreme Court Reports—

“If the power to regulate interstate commerce applied to all the incidents to which such commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the States, and would exclude State control over many contracts purely domestic in their nature.”

The Government submits as a fourth proposition the following:

“Having the power to prohibit the transportation of women and girls in interstate and foreign commerce for immoral purposes, and having exercised such power, Congress may make the prohibiting effectual by punishing any person who knowingly induces, solicits or facilitates such illegal transportation.”

RESPONSE TO THE ABOVE PROPOSITION.

What the distinguished Assistant Attorney General had in mind in the paragraph just quoted was that—

“When Congress enacts a law which it has the power to enact under any clause of the Constitution, it also has all necessary incidental power to make the act enacted effectual.”

Let us apply the principle just stated to the Act in question. If Congress had the power to prohibit a woman from traveling from one state to another for the purpose of prostitution, and in pursuance of such power enact a law prohibiting women from traveling from state to state for the purpose of prostitution, the claim might then be made by the Government that Congress likewise had under its incidental power the right to punish persons aiding said women traveling from state to state for immoral purposes in order to make the law by it enacted effectual. As a matter of fact, as will be observed from the mere reading of the Act in question, Congress did not in this Act, or in any other act, prohibit women from traveling from state to state for the purpose of prostitution, and not having done so, Congress has no incidental power to punish a person who merely procures transportation for a woman traveling from state to state,

The other authorities cited by the Government,

to-wit, the lottery cases, etc., are fully answered in the original brief filed by plaintiffs in error, and need not be further discussed.

If the Statute in question is held constitutional, Congress could open up a wide field of legislation, which would result in curtailing the liberties of the citizens of this country to an extent undreamed of.

It would be possible for Congress to enact a law prohibiting the traveling by persons into sister states for the purpose of committing, in the language of Justice Pitney, "malicious mischief" therein. Congress could prohibit persons from entering sister states if such persons intended to violate a law therein. Thus, as pointed out in the oral argument, if such a law were enacted, and it would be valid, (if the so-called White Slave Law is constitutional) a person could be sent to the penitentiary if he came into a state for the purpose of delivering an address upon a street corner without first having obtained the permission of the local authorities, which in many localities is a crime, and as was pointed out by Justice Brewer in the Keller and Ullman cases, Congress could make it an offense punishable under the Federal laws for any citizen to agree to commit an offense with a person who is forbidden to travel under the Federal laws, regardless where such agreement may have been made; that Congress could enact laws making it offenses and punished by the Federal authorities to do numerous things which are lawful in the states where such persons are domiciled, and which would be an infringement of the police powers of the states, and I respectfully call the Court's attention to the numerous authorities cited in my original brief on the subjects of constitutional liberty, social intercourse and police powers of the states. If the law in question is held by this Court to be valid, Congress will be enabled under the wide discretion it would then have, to legislate upon numerous subjects which would result in making this country as despotic as that of Russia.

The word "knowingly," in Sections 2 and 3 of the

Law in question, has relation only to the intent of the woman or girl to do the acts and things enumerated, and it is a travesty on legal procedure to hold that interstate commerce might be lawful or unlawful, according to the intent of the party paying the fare, or the party receiving it, and if such a rule were held, it would seem proper to fix some limit as to the degree of the offense; because it must be recognized that there are different degrees in chastity and morality, and this Statute does not attempt to discriminate between the grades of morality as a basis for the privilege of using the interstate carrier, etc.

What, therefore, would be the duty of the person selling the ticket, or other evidence of the right to travel, and what would be the duty of the conductor of the train upon which such a female might be riding? Is he to inquire into the moral character of the females who ride on the train? The mere thought of such a condition is repulsive. In the first place the traveling of females upon a railroad is not interstate commerce, neither is the purchase of a ticket for such a female by a person who does not accompany her interstate commerce, because it is not the purchaser of such tickets that transports the female—it is the public carrier.

The conductor would then have to inquire of the female transported as to her *purpose and intent* in traveling—he would have to ascertain if her purpose and intent were immoral. If he should so ascertain, what is his duty?—to compel her to leave the train he would suffer the penalties of trespass and the railroad company would be liable in damages. If he permits her to travel—he is subject to the penalties of the White Slave Statute. Is such a law reasonable, and does it come within the rule of “perfection of reason”, which Blackstone defines law to mean?

Quoting, therefore, the words of Chief Justice Fuller, in the case of *United States v. E. C. Knight & Co.*, 156 U. S., page 13—

“Acknowledged evils, however grave and urgent they may appear to be, had better be *borne*

than the risk be run, in the effort to suppress them, of more consequences by resort to expedients of even doubtful constitutionality."

As to the variance between the allegation and proof, and as to the errors occurring at the trial, same are fully recited in the original brief, and need not further be discussed.

I therefore respectfully submit that the Act in question is invalid and should be so declared by this Court.

MAX LEVY,

Counsel for Emma Harris, alias Emma R. Smith, and Bessie Green, and Della Bennett, Plaintiffs in Error and Petitioners.

Supreme Court of the United States

*Emma Harris, alias
Emma R. Smith, and
Bessie Green,*

Plaintiffs in Error, } No. 1067.

vs

*The United States of America,
Defendant in Error.* }

Della Bennett,

Plaintiff in Error, }

vs

*The United States of America,
Defendant in Error.* }

No. 1068.

*On Writ of Error to the Circuit Court of Appeals
for the Sixth Circuit.*

BRIEF IN OPPOSITION TO MOTION TO DISMISS WRITS OF ERROR.

STATEMENT OF CASE.

His Honor, Justice Lurton, allowed plaintiffs in error to file petitions for writs of error, and the defendant in error has filed a motion to dismiss the

writs of error on the theory that the decision of the Circuit Court of Appeals was final, and cite in support of said motion the opinion of this Court in the case of *MacFadden v. United States*. 213 U. S., 288. It is strongly urged by the Government that the fact that the plaintiffs in error were indicted and convicted for a violation of a criminal statute, and brought error proceedings to the Court of Appeals when they had the privilege of coming direct to this Court, of which privilege they did not avail themselves, that, therefore, they had lost their right to have this Court review the proceedings.

If the only question involved in this case were whether or not the plaintiffs in error were properly convicted under the rules of evidence under a *valid* criminal statute, then it would be conceded that the position taken by the Government was proper.

In this case, however, the validity of the White Slave Statute under which the plaintiffs in error were indicted and convicted, was attacked. The right of Congress to enact the statute in question, under the authority given it by virtue of the commerce clause of the Constitution, was questioned. It was expressly contended that Congress had no right under the Constitution of the United States to pass this statute, and an examination of the records in these cases will develop that from the beginning to the close of the cases, the constitutionality of the Act was attacked—by a motion to quash, demurrer and motion in arrest of judgment.

Does it not seem almost revolting to think that if this Court should find that the law in question is unconstitutional, that persons could be punished and sent to the Penitentiary because they had been convicted in the lower courts under an invalid and unconstitutional statute, when they did not come to this Court direct from the District Court, preferring to submit their cases to the Court of Appeals prior to having this Court pass upon the same, especially in view of the language of this Court in the case of Norton v. Shelby County, 118 U. S., 425, when it said:—

“An unconstitutional act is not a law. It is in legal contemplation as though it had never been passed.”

PERSONS ARE NOT SUBJECTS OF COMMERCE.

This Court has repeatedly held that—

“*Persons are not subjects of commerce*, and that the true test as to whether an article or thing is a proper subject of commerce and can be considered as a commercial article is whether the said article or thing is *merchantable*.”

New York v. Miln, 11 Peters, 102;

Bowman v. Chicago & C. Railway Co., 125 U. S., 489;

License Cases, 5 How., p. 599.

Notwithstanding the decisions of this Court that *persons are not subjects of commerce*, Congress enacted a statute, by the terms of which it virtually overrules the opinion of this Court, and declares through

the White Slave Statute, attacked herein, that persons are subjects of commerce, and in defiance of all legal rights of persons, holds it to be a crime to assist another person to do a lawful act. In other words, by the very terms of the statute it is not criminal for women to travel from state to state for any purpose, but persons assisting such women in traveling in interstate commerce, which is not declared to be unlawful under said statute, become criminals.

The Government urges upon this Court the startling proposition which can be summarized as follows:

“Even though a criminal statute may be unconstitutional, that fact cannot be presented to this Court by a person aggrieved if they submitted the constitutionality of such an act to the Court of Appeals.”

This Court has held that it has
* * jurisdiction on error where the case presents for determination the question of the validity of congressional legislation.”

170 U. S., 45;

174 U. S., 1.

“The words “the validity of” a statute, as used in the Act of March 3, 1885, refer only to the power of Congress to enact the statute as it is by its terms or is made by construction, and not a mere judicial construction, as contra distinguished from a denial of the legislative power.

Whenever the power to enact a statute as it is by its terms or is made to read by construction

is fairly open to denial, and denied, the validity of the statute is drawn in question."

—*Baltimore & P. R. Co., v. Hopkins*, 130 U. S., 210—

"A statute to recover the amount of a tax enacted under the War Revenue Act of June 13, 1898, and paid under protest, in which not only is the construction of that statute involved, but the rights of the parties depend upon the plaintiffs' own showing, upon the Constitutionality of such statute, and the construction or application of the Federal Constitution, is not one arising under the Revenue laws within the meaning of the Act of March 3, 1891, Section 6, which makes the judgment of the Circuit Court of Appeals in such cases final, and such judgment may, therefore, be brought to the Federal Supreme Court for review as of right."—*Spreckles Sugar Refining Co. v. McLain*, 192 U. S., 397.

It is contended, however, that Plaintiffs in error have no standing in this Court under the decision of *MacFadden v. The United States*, 213, U. S., 288, in which case it was held that—

"When the jurisdiction of the District Court depended solely upon the fact that the case was one arising under the criminal laws is, by the very terms of the Act of March 3, 1891, Section 6, "final," and is not reviewable in the Federal Supreme Court, although constitutional rights were invoked by the accused, and the case might therefore under Section 5 of that Act, have been brought directly from the District Court to the Supreme Court."

An examination of the facts in that case are not at all analogous to this case.

In the MacFadden case, the trial judge was requested to rule that the statute under which the indictment was returned was unconstitutional.

- a. Because it abridged the freedom of the press.
- b. Because it was uncertain and created no general rule of conduct, and therefore the indictment was without due process of law.
- c. Because it was an ex post facto law.
- d. Because it delegated legislative power to the court or jury.

It is to be noted that the authority of Congress was not questioned to enact the statute in the MacFadden case; but in the cases at bar, however, the validity of the law itself is called into question. The power of Congress to pass the White Slavery Statute under the Constitution of the United States is questioned, and Justice Moody rendering the opinion in the MacFadden case, on page 296, says in reference to the Spreckles case, hereinbefore spoken of, quoted in said decision:—

“Here was a case, then, which, in one aspect of the jurisdiction, was reviewable by this court, and, in another aspect of the jurisdiction, was not reviewable here. The precise case had not arisen before, and the statute was silent upon it. It was held that the writ of error could be maintained, as the jurisdiction of the trial court did not depend solely upon grounds which, by the terms of the act, would have made the judgment

of the circuit court of appeals final, but depended also upon grounds which would have permitted a writ of error from this court to the circuit court of appeals. That this was the precise ground of the decision is clear from the whole trend of the reasoning and from the statement in the opinion, p. 410, that "the judgment of the circuit court of appeals is not final, within the meaning of the 6th section, in a case which, although arising under a law providing for internal revenue, and involving the construction of that law, is yet a case also involving, from the outset, from the plaintiff's showing, the construction or application of the Constitution, or the constitutionality of an act of Congress. The case decides nothing more than that, where the jurisdiction of the trial court is shown, by the plaintiff's statement first, a ground where the appellate jurisdiction of the circuit court of appeals was made final by the statute; and, second, a ground where the appellate jurisdiction of the circuit court of appeals was made by the statute reviewable in this court, the latter ground of jurisdiction would control, and the writ of error to the circuit court of appeals would lie."

It is therefore respectfully submitted to the Court that the motion to dismiss the writs of error should be overruled.

WRITS OF CERTIORARI APPLIED FOR.

Should this Court, however, be of the opinion that the plaintiffs in error have exhausted their remedy, and that the petitions for writs of error do

not lie, we would respectfully urge that the petitions for writs of certiorari, applied for by the plaintiffs in error, should be granted, so that no injustice might be done, and the highest tribunal of the land be given the opportunity of passing on the constitutionality of the Statute in question.

Respectfully submitted,

MAX LEVY,

Counsel for Plaintiffs in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

EMMA HARRIS, ALIAS EMMA R. SMITH,
and Bessie Green, plaintiffs in error,
v.
THE UNITED STATES. } No. 1067

DELLA BENNETT, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 1068.

ON WRITS OF ERROR TO THE CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF.

Comes now the Solicitor General, on behalf of the United States, and moves the court to dismiss the writs of error in each of the above-entitled cases.

STATEMENT.

Plaintiffs in error were indicted in the District Court of the United States for the Southern District of Ohio for violating sections 2 and 3 of the act of Congress, approved June 25, 1910, known as the White Slave Traffic Act (36 Stat., 825). They pleaded not guilty, but upon trial were convicted. Harris

was sentenced to a term of four years in the penitentiary, Green to a term of one year in the penitentiary, and Bennett to a term of eleven months in jail, and to pay the costs of prosecution.

The indictment in each case charged, in substance, that the defendant, or defendants, did knowingly and unlawfully cause to be transported, and did aid and assist in procuring the transportation of, in interstate commerce, certain women, for the purpose and with the intention that such women should engage in the practice of prostitution, and that they did knowingly and unlawfully persuade, induce, and entice such women to travel in interstate commerce for said purpose.

In each case the constitutionality of the White Slave Traffic Act was challenged by demurrer or motion in arrest of judgment, or both, and the action of the trial court in overruling these pleadings was assigned, among other errors, in the Circuit Court of Appeals. That court sustained the statute and affirmed the judgments of the trial court. Thereupon these writs of error were sued out.

ARGUMENT.

This court is without jurisdiction to review these cases upon writ of error. The act of March 3, 1891, section 6 (26 Stat., 828), provides that "the judgments or decrees of the Circuit Courts of Appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the

United States or citizens of different States; also in all cases arising under the patent laws, under the revenue laws, and under the *criminal laws* and in admiralty cases." In all other cases there is a right of review by the Supreme Court if the matter in controversy exceeds one thousand dollars.

The question whether a writ of error will lie from this court to a Circuit Court of Appeals to review a case arising under the criminal laws of the United States was definitely determined in the negative in *Macfadden v. United States* (213 U. S., 288). That, like the present cases, was a prosecution for the violation of a statute of the United States, and it was sought to have the judgment of the Circuit Court of Appeals reviewed, upon a writ of error, on the ground that a constitutional question was involved; but the court said (pp. 296-297) that—

* * * the only ground of jurisdiction of the District Court in the case at bar was that it was a case arising under the criminal laws. In such a case the statute makes the judgment of the Circuit Court of Appeals final, and it is no less final because the petitioner here might, if he had been so advised, originally have invoked directly, under section 5 of the act, the appellate jurisdiction of this court.

In that case the court made clear the test for determining whether a case is appealable to this court from a Circuit Court of Appeals. The test it said (p. 294) was "the sources of jurisdiction of the trial court." The judgment of the Circuit Court of Appeals is final if the jurisdiction of the trial court depends *entirely*

upon the character of the parties, as being citizens of different States, or upon the nature of the case, as arising under the patent, the revenue, or the criminal laws, or being an admiralty case. If the jurisdiction rests also upon any other ground, there is a right of appeal, *provided the requisite amount is involved*. The case of *Spreckels Sugar Refining Co. v. McClain* (192 U. S., 397, 408-9), the court said, was to be distinguished from the *Macfadden* case, because it appeared that in the former the jurisdiction of the trial court "was invoked upon two grounds; first, because it was a revenue case; and, second, because it arose under the Constitution and laws of the United States." (213 U. S., 295.)

In this case, as in the *Macfadden* case, the sole ground of the jurisdiction of the trial court was that it was a case arising under the criminal laws of the United States. There, as here, the claim was made that the statute under which the prosecution was instituted was unconstitutional. But in that case the court held that this was not sufficient to give it jurisdiction to review the judgment of the Circuit Court of Appeals, following, on this point, *Cary Mfg. Co. v. Acme Flexible Clasp Co.* (187 U. S., 427, 428), a case of criminal contempt, where it was said:

* * * Although it is insisted that the judgment imposing the fine was a final judgment in a criminal matter, it is argued that it involved the denial of constitutional rights, and hence that this court has jurisdiction

under section five of that act; but it is settled that even if a party might be entitled to come directly to this court under that section, yet if he does not do so, and carries his case to the Circuit Court of Appeals, he must abide by the judgment of that court. (*Robinson v. Caldwell*, 165 U. S., 359; *American Sugar Refining Co. v. New Orleans*, 181 U. S., 277; *Huguley Manufacturing Co. v. Gáleton Cotton Mills*, 184 U. S., 290; *Ayres v. Polsdorfer*, p. 585, post.)

The finality of judgments of the Circuit Courts of Appeals in criminal cases, although involving constitutional questions, is further emphasized by the fact that in such cases the jurisdictional amount necessary to authorize any appeal to this court is not involved. That a case not made final in the Circuit Court of Appeals must involve, in addition to the constitutional question, the necessary jurisdictional amount was recognized in *Spreckels Sugar Refining Co. v. McClain*, *supra*, as will appear from the following quotation from the opinion in that case (192 U. S., 408-9):

* * * We lean to that interpretation of the act which enables the defeated party in such a case in the Circuit Court of Appeals to have, as of right, upon writ of error to that court, a reexamination here of the judgment (*the requisite amount being involved*) if the correctness of the judgment depends in whole or in part upon the application or construction of the Constitution, or upon the constitutionality of any act of Congress drawn in question.

Cases not expressly made final can not be brought here unless they involve one thousand dollars besides costs. So section 6 of the act of March 3, 1891, provides, and the appellate jurisdiction of this court, it is well settled, is only such as is authorized by Congress. Assuming, therefore, that this case, for any reason, is not to be regarded as one expressly made final in the Circuit Court of Appeals, no appeal would lie because the requisite jurisdictional amount is not involved.

Respectfully submitted.

F. W. LEHMANN,
Solicitor General.

WILLIAM R. HARR,
Assistant Attorney General.

APPENDIX.

For the convenience of the court in considering this motion, the following parts of the transcript of the record in these cases, showing the questions raised, are printed, together with the opinion of the Circuit Court of Appeals in each case.

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[From the transcript of the record in case No. 1067 on the docket of this court.]

THE UNITED STATES OF AMERICA,
Southern District of Ohio,
Western Division, ss:

In the District Court of the United States, within and
for the district and division aforesaid.

Present, the honorable Howard C. Hollister, judge.
Among the proceedings had were the following, to
wit:

THE UNITED STATES OF AMERICA,	} Indictment. No. 798.
v.	
EMMA HARRIS, ALIAS EMMA R. SMITH,	
and BESSIE GREEN.	

Be it remembered that on the ninth day of February, in the year of our Lord, one thousand nine hundred and eleven, came the grand jurors of the United States, within and for the district and division aforesaid, and presented to the court their certain bill of indictment against the defendants herein, which said bill of indictment is clothed in the words and figures following, to wit:

Indictment.

THE UNITED STATES OF AMERICA,
Western Division of the
Southern District of Ohio, ss:

In the District Court of the United States, within and for the Western Division of the Southern District of Ohio, in the Sixth Judicial Circuit, of the term of February, in the year of our Lord one thousand nine hundred and eleven.

1st count. Sec. 2, act of June 25, 1910, 36 Stat., 825; "White slave traffic act."

The grand jurors of the United States of America, duly empaneled, sworn and charged to inquire within

and for the western division of said district, upon their oaths and affirmations, present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to wit, the eighth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the Circuit and Western Division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly cause to be transported, and did aid and assist in obtaining transportation for and in transporting in interstate commerce, to wit, from the city of Charleston, in the State of West Virginia, to and into the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, two certain women, to wit, Nellie Stover and Stella Larkins, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them, that each of said Nellie Stover and Stella Larkins, would and should in said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit, and indiscriminate sexual intercourse with men for hire and gain, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

2nd count. Sec. 2, act of June 25, 1910, 36 Stat., 825; "White slave traffic act."

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to wit, the eighth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the

Circuit and Western Division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly procure and obtain, and cause to be procured and obtained, at the city of Charleston, in the State of West Virginia, two certain railroad passenger tickets from the Chesapeake & Ohio Railway Company, then and there a common carrier of passengers, engaged in interstate commerce, each of which said tickets was good for transportation for one person from said city of Charleston, West Virginia, to the city of Cincinnati, in the State of Ohio, upon and over the line and railroad route of the said railway company, with the purpose and intention that said tickets should be used by two certain women, to wit, Nellie Stover and Stella Larkins, in interstate commerce, to wit, in going from said city of Charleston, in the State of West Virginia, to said city of Cincinnati, in said State of Ohio, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them, that each of said women, to wit, Nellie Stover and Stella Larkins, would and should, in said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit, and indiscriminate sexual intercourse with men for hire and gain, whereby, and with the means and by the use of the said tickets, said Nellie Stover and Stella Larkins were then and there and thereupon carried and transported as passengers in interstate commerce, over and upon the railway route and line of said railway company, to wit, from said city of Charleston, in the State of West Virginia, to and into said city of Cincinnati, in the State of Ohio, and within the southern judicial district of said State of Ohio, and within the

jurisdiction of this court, for the purposes aforesaid, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

3rd count. Sec. 3, act of June 25, 1910, 36 Stat. 825; "White-slave traffic act."

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Emma Harris, alias Emma R. Smith, and Bessie Green, on or about, to wit, the eighth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the circuit and western division of the district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly persuade, induce, entice, and cause to be persuaded, induced and enticed, two certain women, to wit, Nellie Stover and Stella Larkins, to go from one place, to wit, the city of Charleston, in the State of West Virginia, to another place, to wit, the city of Cincinnati, in the State of Ohio, within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, in interstate commerce, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Emma Harris, alias Emma R. Smith, and said Bessie Green, and each of them, that each of said women, to wit Nellie Stover and Stella Larkins, would and should in the said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit, and indiscriminate sexual intercourse with men for hire and gain, with the consent of the said Nellie Stover and Stella Larkins; and did then and there and thereby knowingly cause and aid and assist in causing said women, to wit, Nellie Stover and Stella Larkins, to go and be carried and trans-

ported in interstate commerce, as passengers, upon and over the railway route and line of the Chesapeake & Ohio Railway Company, a common carrier engaged in interstate commerce, to wit, from the said city of Charleston, in the State of West Virginia, to and into the said city of Cincinnati, in the State of Ohio, for the purpose aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SHERMAN T. MCPHERSON,
*United States Attorney in and for the
 Southern District of Ohio.*

* * * * *

Entry—10-320.

And afterwards, to-wit: on the same day, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,	} No. 798.
vs.	
EMMA HARRIS, ALIAS EMMA R. SMITH,	
AND BESSIE GREEN, ETC.	

This day this cause again came on to be heard, and came the defendants, Emma Harris, alias Emma R. Smith, and Bessie Green, pursuant to the tenor of their recognizance heretofore given herein, and by their attorneys, and came the district attorney on behalf of the United States, and having been arraigned at the bar of this court and said indictment read to them for plea say they are not guilty in manner and form as charged in said indictment, and for trial put themselves upon the country, and the district attorney doth the like:

Whereupon to try the issues joined a jury being called came to-wit: Enos Conrad, W. B. Eppert,

Monte Coffin, J. P. Frederick, John C. Williamson, L. D. Elliott, William G. McIntyre, Robert T. Skinner, G. W. Waxler, John Duis, Harry N. Dickensheets, and Henry W. Suemening, who were duly empaneled and sworn herein well and truly to try the issues joined; and having heard the testimony, the arguments of counsel, and the charge of the court, the jury retired to their room attended by an officer of this court to deliberate upon a verdict; and after due deliberation the said jury returned the following verdict, to-wit:

We, the jury herein do find the defendant Emma Harris, alias Emma R. Smith, guilty in manner and form as charged in the counts of said indictment. We further find the defendant Bessie Green guilty in manner and form as charged in the counts of said indictment.

(Signed) ENOS CONRAD, *Foreman.*

To all of which the said defendants by their attorneys except and give notice of a motion for a new trial.

Thereupon the district attorney moving for sentence the court pronounced the following sentence, to-wit: That the said defendant Emma Harris, alias Emma R. Smith, be confined in the United States penitentiary at Leavenworth, Kansas, for a period of four years, and that she pay the costs of prosecution; that the said defendant Bessie Green be confined in the penitentiary at Leavenworth, Kansas, for a period of one year and that she pay the costs of prosecution.

* * * *

Supplemental Motion in Arrest of Judgment.

And afterwards, to wit, on the same day, came the defendants, by their attorney, and filed in the clerk's office of the court aforesaid a certain supplemental

motion in this cause, which said supplemental motion is clothed in the words and figures following, to wit:

Supplemental Motion in Arrest of Judgment.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.

EMMA HARRIS, ALIAS EMMA R. SMITH, AND BESSIE GREEN, DEFENDANTS.

Now comes the defendants, by leave of court first had and obtained and file this their supplemental motion in arrest of judgment in this cause, for the following reason, that the statutes which the defendants are charged with violating are unconstitutional.

MAX LEVY,
Attorney for Defendants.

Entry—10-334.

And afterwards, to wit, on the same day, an order was made upon the journal of said court in said cause, which said order is clothed in the words and figures following, to wit:

Entry Overruling Motion in Arrest of Judgment and Supplemental Motion in Arrest of Judgment.

THE UNITED STATES OF AMERICA,
plaintiff,
vs.

EMMA R. HARRIS, ALIAS EMMA R. SMITH,
and Bessie Green, defendants.

No. 798.

This cause came on to be heard upon the motion in arrest of judgment and supplemental motion in arrest of judgment, herein filed by the defendants, on the arguments of counsel; and the court, being fully advised in the premises, find that the said motion in

arrest of judgment and supplemental motion in arrest of judgment are not well taken, and overrules the same, to which ruling of the court defendants except.

* * * *

Assignment of Errors.

And afterwards, to wit, on the same day, the following assignment of errors was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA,
PLAINTIFF,

vs.

EMMA HARRIS, ALIAS EMMA R. SMITH, AND
BESSIE GREEN, DEFENDANTS.

} No. 798.

Assignment of Errors.

Now come Emma Harris, alias Emma R. Smith, and Bessie Green, defendants herein, by Max Levy, their attorney, and say that in the records and proceedings aforesaid there is manifest error, in this, to wit:

First.

The court erred in overruling the motion to quash the indictment, as appears of record herein, and to which counsel for defendants then and there excepted.

Second.

The court erred in overruling the demurrer, filed by the defendants herein, to which ruling counsel for defendants then and there excepted, as appears of record herein.

Third.

The court erred in overruling the motion of the defendants for a separate trial, to which ruling counsel for defendants then and there excepted, as appears on page 2 of the bill of exceptions.

Fourth.

The court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 10 of the bill of exceptions:

"What did she say?" (referring to the defendant, Emma Harris), and in overruling the defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Fifth.

The court erred in refusing the motion of the defendants to strike out the following answer:

"She said it was a good place to make money."

Which answer was made in response to question "What did she say?" as appears on page 10 of the bill of exceptions, and to which ruling counsel for defendants then and there excepted.

Sixth.

The court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 11 of the bill of exceptions:

"What else was said in that conversation?" and in overruling the defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Seventh.

The court erred in permitting the witness, Stella Larkins, to answer the following question, as appears at the bottom of page 12 and the top of page 13 of the bill of exceptions:

"Now, what conversation, if any, did you have with Emma Harris about your trunk, and about the car fare that Bessie Green bought your ticket with to bring you from Charleston?" and in overruling defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Eighth.

The court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 13 of the bill of exceptions:

"Did she ever put it down on the book afterwards?" and in overruling defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Ninth.

The court erred in overruling the motion made by defendants to strike out the following answer—"Yes, sir"—in response to the following question—"Did she ever put it down on the book afterwards?" as appears on page 13 of the bill of exceptions, and to which ruling of the court counsel for defendants then and there excepted.

Tenth.

The court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 13 of the bill of exceptions:

"What did you see in that book?" and in overruling defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Eleventh.

The court erred in permitting the witness, Stella Larkins, to answer the following question, as appears at the bottom of page 13 of the bill of exceptions:

"Which railroad fare do you mean?" and in overruling defendants' objection thereto, and to which ruling counsel for defendants then and there excepted.

Twelfth.

The court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 14 of the bill of exceptions: "How much?" and to which ruling of the court counsel for defendants then and there excepted.

Thirteenth.

The court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 14 of the bill of exceptions:

"And how much of a debt was against you?" and to which ruling of the court counsel for defendants then and there excepted.

Fourteenth.

The court erred in permitting the witness, Stella Larkins, to answer the following question, as appears on page 14 of the bill of exceptions:

"\$30.00 the expressage and \$5.05 railroad fare?" and to which ruling of the court counsel for defendants then and there excepted.

Fifteenth.

The court erred in permitting the cards, marked "Exhibit A and Exhibit B" to be read in evidence, as appears on page 16 of the bill of exceptions, and in

overruling defendants' objection thereto, to which ruling of the court counsel for defendants then and there excepted.

Sixteenth.

The court erred in permitting the witness, Nellie Stover, to answer the following question, as appears on page 37 of the bill of exceptions:

"Give the substance of it, can you?" and in overruling the objection of the defendants, to which ruling counsel for defendants then and there excepted.

Seventeenth.

The court erred in permitting the witness, Nellie Stover, to answer the following question, as appears on page 38 of the bill of exceptions:

"And how much was the express, do you remember?" and in overruling the objection of the defendants, to which ruling counsel for defendants then and there excepted.

Eighteenth.

The court erred in permitting the witness, Nellie Stover, to answer the following question, as appears at the bottom of page 38 of the bill of exceptions:

"What, if any, conversation did you have with Miss Harris about the payment of these charges and expressage?" and in overruling defendants' objection thereto, to which ruling counsel for defendants then and there excepted.

Nineteenth.

The court erred in overruling the motion of the defendants to strike out the following answer of the witness, Nellie Stover, as appears on page 39 of the bill of exceptions:

"Mrs. Harris always kept books with us and she put down everything; everything was put down,

about paying my trunk, the bill, and she put down about my fare, and I was to pay her," and to which ruling counsel for defendants then and there excepted.

Twentieth.

The verdict and judgment rendered herein is contrary to law.

Twenty-first.

The verdict and judgment rendered herein is contrary to law and not sustained by the evidence.

Twenty-second.

The verdict does not establish the guilt of Emma Harris, alias Emma R. Smith, beyond a reasonable doubt.

Twenty-third.

The verdict does not establish the guilt of Bessie Green beyond a reasonable doubt.

Twenty-fourth.

The court erred in overruling the motion in arrest of judgment and supplemental motion in arrest of judgment, to which defendants excepted, as appears of record herein.

Twenty-fifth.

For other reasons apparent upon the face of the record.

Wherefore defendants pray that said judgment of the district court may be reversed.

MAX LEVY,
Attorney for Defendants.

[Opinion of the Circuit Court of Appeals.]

United States Circuit Court of Appeals, Sixth Circuit.

EMMA HARRIS, ALIAS EMMA R. SMITH AND BESSIE GREEN, PLAINTIFFS IN ERROR, vs. UNITED STATES OF AMERICA, DEFENDANT IN ERROR.	}	Error to the Dis- trict Court of the United States for the Southern Dis- trict of Ohio.
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Submitted February 14, 1912.
Decided March 5, 1912.

Before WARRINGTON, KNAPPEN, and DENISON,
Circuit Judges.

DENISON, Circuit Judge:

The case presents no question not disposed of by our opinion in the accompanying case of *Bennett vs. United States*, save this: Was respondent Harris entitled to an instructed acquittal because of the failure of sufficient evidence to support a verdict of guilty?

In this case, two women came from Charleston, West Virginia, and entered and remained for a time in the house of prostitution kept by Harris, in Cincinnati. There is no direct evidence that she had anything to do with inducing or aiding them to come; and support for this conclusion is to be found only in the circumstances. The evidence tended to show that

respondent Green, an inmate of the same house, went from Cincinnati to Covington, and then, after a couple of days, to Charleston, arriving there in the morning; that on the same afternoon she started back for Cincinnati; that she furnished money to pay transportation for the two Charleston women who came with her; that they all went together to the Harris house the next morning; that a day or two later, the trunks of the Charleston women followed them to the Harris house with C. O. D. charges, including bills due from them to the keeper of the Charleston house of the same kind where they had been living; that Harris paid these C. O. D. charges and charged the same on her book against the Charleston women; and that such book, when later exhibited to them, also contained the charge for their railroad tickets from Charleston. Inasmuch as there was nothing unlawful, under this statute, in receiving these women or advancing the charges on their baggage, conviction must rest upon the theory that respondent Green went to Charleston and advanced the railroad fare while acting as the agent for the respondent Harris. This is explicitly denied by respondent Green, as a witness. The circumstance that she went away and soon returned with the other women is consistent with this theory of guilt, but it is not seriously inconsistent with the theory that Green acted for herself only; and respondent's counsel therefore say that absolutely essential support for the verdict must be found, if at all, in the proof indicating that she charged this railroad fare against the Charleston women in her account with them; and further say that such evidence of this fact as appears in this case—the testimony of a witness with a grievance who claims to have seen the

entry in a book not otherwise shown to exist—is evidence so easily fabricated and so far relates to a fact which might be consistent with innocence, that a verdict based thereon should not be allowed to stand. This argument by respondents' counsel rests on a confusion between the fact and the evidence of that fact. The agency is the essential fact; the existence of the book entry is one item of evidence; and we do not feel at liberty to set aside the verdict in this case for this reason. We think the question whether, under all the evidence, Green was acting for Harris, was a question for the jury. The weakness of the proof of the book entry was to be considered in connection with all the circumstances, including Harris' occupation, the likelihood that she might desire and send for more inmates, the reasonableness of the story told by Green, and all the other surrounding facts. The keeper of such a resort who receives inmates, knowing that they have just come from another State and knowing the purpose for which they came, and who then advances them money incident to their journey, and who finds that a jury has concluded that she instigated the journey, can not say that the verdict is without support because the jury's conclusion is drawn from circumstances which in another environment, might not have led to the same inference. The probative force of such environment, as supporting or as contradicting the words of a witness, pertains to an issue of fact and not to one of law.

It follows that the conviction and sentence will be affirmed.

[From the transcript of the record in case No. 1068 on the docket of this court.]

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

In the District Court of the United States, within and
for the District and Division aforesaid.

Present, the Honorable Howard C. Hollister, dis-
trict judge.

Among the proceedings had were the following,
to wit:

THE UNITED STATES OF AMERICA,	} Criminal	
vs.		No. 797.
DELLA BENNETT.		

Indictment.

Be it remembered that on the 9th day of February,
in the year of our Lord one thousand nine hundred
and eleven, came the grand jurors of the United
States of America, duly empaneled within and for the
district and division aforesaid, and presented their
certain bill of indictment, which said bill of indict-
ment is clothed in the words and figures following,
to-wit:

THE UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, ss:
In the District Court of the United States, within
and for the Western Division of the Southern District
of Ohio, in the Sixth Judicial Circuit, of the term of
February, in the year of our Lord one thousand nine
hundred and eleven.

1st Count. Sec. 2, act of June 25, 1910, 36 Stat., 825, "White-slave traffic act."

The grand jurors of the United States of America, duly empaneled, sworn and charged to inquire within and for the western division of said district, upon their oaths and affirmations, present Della Bennett, on or about, to wit, the twenty-ninth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the Western Division of the Southern District of Ohio, and within the jurisdiction of this court, did then and there unlawfully and knowingly cause to be transported, and did aid and assist in obtaining transportation for and in transporting in interstate commerce, to wit, from the city of Chicago, in the State of Illinois, to and into the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, two certain women, to wit, Opal Clark and Eva Parks, for the purpose of prostitution, to-wit, for and with the purpose and intention on the part of said Della Bennett that said Opal Clark and Eva Parks, and each of them, would and should in said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit, and indiscriminate sexual intercourse with men for hire and gain, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

2nd Count. Sec. 2, act of June 25, 1910, 36 Stat., 825; "White-slave traffic act."

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Della Bennett, on or about, to wit, the twenty-ninth

day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the Western Division of the Southern District of Ohio, and within the jurisdiction of this court, did then and there unlawfully and knowingly procure and obtain, and cause to be procured and obtained, at the city of Chicago, in the State of Illinois, two certain railroad passenger tickets from the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, then and there a common carrier of passengers, engaged in interstate commerce; each of which said tickets was then and there good for transportation for one person from said city of Chicago, in the State of Illinois, to the city of Cincinnati, in the State of Ohio, upon and over the line and railroad route of said railway company, with the purpose and intention that said tickets should be used by two certain women, to wit, Opal Clark and Eva Parks, in interstate commerce, to wit, in going from said city of Chicago, in the State of Illinois, to said city of Cincinnati, in said State of Ohio, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Della Bennett that each of said women, to wit, Opal Clark and Eva Parks, would and should, in said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit, and indiscriminate sexual intercourse with men for hire and gain, whereby and with the means and by the use of said tickets said Opal Clark and said Eva Parks were then and there and thereupon carried and transported as passengers in interstate commerce, over and upon the railway route and line of said railway company, to wit, from said city of Chicago, in the State of Illinois, to and into said city of Cincin-

nati, in the State of Ohio, and within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, for the purposes aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

3rd Count. Sec. 3, act of June 25, 1910, 36 Stat. 825; "White-slave traffic act."

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Della Bennett, on or about, to wit, the twenty-ninth day of September, in the year one thousand nine hundred and ten, in the county of Hamilton, in the State of Ohio, in the western division of the southern district of Ohio, and within the jurisdiction of this court, did then and there unlawfully and knowingly persuade, induce, entice, and cause to be persuaded, induced, and enticed, two certain women, to wit, Opal Clark and Eva Parks, to go from one place, to wit, the city of Chicago, in the State of Illinois, to another place, to wit, the city of Cincinnati, in the State of Ohio, within the southern judicial district of said State of Ohio, and within the jurisdiction of this court, in interstate commerce, for the purpose of prostitution, to wit, for and with the purpose and intention on the part of said Della Bennett, that each of said women, to wit, Opal Clark and Eva Parks, would and should, in the said city of Cincinnati, State of Ohio, engage in the acts and practice of offering and submitting her body to common, illicit, and indiscriminate sexual intercourse with men for hire and gain, with the consent of said Opal Clark and Eva Parks; and did then and there and thereby knowingly cause and aid and assist in causing said women, to wit, Opal Clark and Eva Parks, to go and be carried and transported in

interstate commerce, as passengers, upon and over the railway route and line of The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a common carrier engaged in interstate commerce, to wit, from the said city of Chicago, in the State of Illinois, to and into the said city of Cincinnati, in the State of Ohio, for the purposes aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SHERMAN T. McPHERSON,
United States Attorney, S. D. O.

The following endorsement appears on the back of said indictment:

A true bill.

WM. H. DAVIS, *Foreman.*

* * * * *

Demurrer.

And afterwards, to-wit, on the same day, the following demurrer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division:

THE UNITED STATES OF AMERICA, PLAINTIFF,	} No. 797.
v.	
DELLA BENNETT, DEFENDANT.	

Demurrer.

Now comes Della Bennett, defendant herein, and demurs to each of the three counts in the indictment,

separately and jointly, for the following reasons, to wit:

First. Because the facts stated therein do not constitute an offense punishable under the laws of the United States.

Second. Because the act of June 25, 1910, 36th Statute, 825, known as the "White slave traffic act," for the violation of the provisions of which statute the indictment against this defendant is based, is unconstitutional and void.

Third. Because each of said counts in the indictment charges this defendant with more than one offense.

Fourth. Because the intent is not alleged in the various counts in the indictment, proof of such intent being necessary to make out the offenses charged.

MAX LEVY,
Attorney for Defendants.

Entry 10—317.

And afterwards, to-wit: on the same day, an entry was made upon the journal of said court, in said cause, which said entry is clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,	}	No. 797.
plaintiff,		
<i>vs.</i>		
DELLA BENNETT, DEFENDANT.		

Entry Overruling Demurrer.

This day this cause came on for hearing upon the demurrer of the defendant to the indictment heretofore found herein, and was argued by counsel and submitted to the court, and upon consideration, the court

finds that the demurrer is not well taken, and does overrule the same, to which finding and overruling the defendant through her counsel excepts.

Entry 10—324.

And afterwards, to-wit: on the 20th day of February, A. D. 1911, an order was made upon the journal of said court in said cause, which said order is clothed in the words and figures following, to-wit:

The United States of America, }

vs. }

Della Bennett.

This day this cause came on to be heard and came the defendant pursuant to the tenor of her recognizance as heretofore given, and by her attorneys, and came the district attorney on behalf of the United States; and the said defendant, Della Bennett having been arraigned and said indictment read to her for plea says she is not guilty in manner and form as c^t argued in said indictment for trial puts herself upon the country and the district attorney doth the like.

Whereupon to try the issues joined a jury being called came, to-wit: Oliver Keller, James V. Bonnell, Kemp Coffee, Monte Coffin, James W. Pierce, C. F. Faris, David Mote, Albert Thomas, W. S. Anderson, Charles Street, John Duis, Harry W. Dickensheets, who were duly empaneled and sworn herein well and truly to try the issues joined; and having heard the testimony, the arguments of counsel and the charge of the court, the said jury retired to their room attended by an officer of this court to deliberate upon a verdict. And after due deliberation the said jury returned the following verdict, to-wit: We, the jury herein do find the defendant, Della Bennett, guilty in

manner and form as charged in the three counts of said indictment.

(Signed) DAVID MOTE, *Foreman.*

To all of which the said defendant by her counsel excepts, and gives notice of a motion for a new trial.

Whereupon the district attorney moving for sentence the court, the court, after due consideration deferred sentence until Thursday morning, February 23rd, at ten o'clock, at which time the said defendant is ordered to be present.

Order 10—326.

And afterwards, to-wit: on the 23rd day of February, A. D. 1911, an order was made upon the Journal of said court in said cause, which said order is clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,	} No. 797.
vs.	
DELLA BENNETT.	

This day this cause came on to be heard, and came the said defendant, Della Bennett, pursuant to the tenor of her recognizance, and the district attorney on behalf of the United States;

Thereupon the district attorney moving for sentence the court pronounced the following sentence to-wit: That the said defendant, Della Bennett, be confined in the county jail of Miami County, Ohio, for a period of eleven months, and that she pay the costs of prosecution.

Motion.

And afterwards, to-wit: on the same day, came the defendant, by her attorney and filed in the clerk's office of the court aforesaid, a certain motion in arrest

of judgment, clothed in the words and figures following, to-wit:

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA,	}	No. 797.
plaintiff,		
vs.		
DELLA BENNETT, DEFENDANT.		

Motion in Arrest of Judgment.

Now comes the said Della Bennett, and moves the court to arrest judgment in this cause for the following causes, to-wit:

First. That the facts stated in the indictment do not constitute an offense against the laws of the United States of America.

Second. That the statutes which the defendant was charged with violating are unconstitutional.

Third. Because the intent charged against the defendant in each of the counts of the indictment is not a criminal intent.

MAX LEVY,
Attorney for Defendant.

* * * * *

Entry 10-327.

And afterwards, to wit, on the same day, an order was made upon the journal of said court in said cause, which said order is clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA	}	Entry No. 797.
vs.		
DELLA BENNETT.		

This cause coming on to be heard upon the motion in arrest of judgment, the court upon consideration

thereof, overrules the same, to which ruling the defendant excepts.

* * * * *

Assignment of errors.

And afterwards, to wit, on the same day, the following assignment of errors was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,	} No. 797.
<i>vs.</i>	
DELLA BENNETT, DEFENDANT.	

Assignment of errors.

Now comes Della Bennett, the defendant, by Max Levy, her attorney, and says that in the records and proceedings aforesaid there is manifest error, in this, to wit:

First.

The court erred in overruling the motion to quash the indictment, as appears of record herein, and to which counsel for defendant then and there excepted.

Second.

The court erred in overruling the demurrer filed by the defendants herein, to which ruling counsel for defendant then and there excepted, as appears of record herein.

Third.

The court erred in refusing to grant the motion of the defendant before the impaneling of the jury, that

the United States of America be required to elect on which count of the indictment it would try the defendant, to which ruling the defendant, through her counsel, then and there excepted.

Fourth.

The court erred in permitting the envelope, marked "Exhibit No. 1," and first sheet of letter, marked "Exhibit No. 2," and the second sheet of letter, marked "Exhibit No. 2a," and the third sheet of the letter, marked "Exhibit No. 2b," as appears on pages 15 and 16 of the bill of exceptions, and in overruling defendant's objection thereto, to which ruling counsel for defendant then and there excepted, as appears of record herein.

Fifth.

The court erred in overruling the motion of the defendant to strike the letter, marked "Exhibit No. 1, No. 2, No. 2a, and 2b," from the record, as found on page 15 of the bill of exceptions, to which ruling of the court the defendant then and there excepted.

Sixth.

The court erred in permitting the envelope, marked "Exhibit No. 3," and the letter, first page of which is marked "Exhibit No. 3a," and second page marked "Exhibit No. 3b," as appears on pages 17 and 18 of the bill of exceptions, and in overruling defendant's objection to the introduction of the same, to which ruling counsel for defendant then and there excepted, as appears of record herein.

Seventh.

The court erred in overruling the motion of the defendant to strike the letter marked "Exhibit No. 4, No. 4a, and No. 4b" from the record, as appears on

page 20 of the bill of exceptions, and to which ruling of the court counsel for defendant then and there excepted, as appears of record herein.

Eighth.

The court erred in permitting the letter marked "Exhibit No. 5 and Exhibit No. 5a" to be read in evidence, and in overruling defendant's objection thereto, and to which ruling counsel for defendant then and there excepted, as appears of record herein on pages 20 and 21 of the bill of exceptions.

Ninth.

The court erred in permitting the witness, Opal Clark, to answer the following question, as appears on page 24 of the bill of exceptions:

"What did you tell her in that letter?" and in overruling defendant's objection thereto, and to which ruling counsel for defendant then and there excepted, as appears of record herein.

Tenth.

The court erred in permitting the witness, Opal Clark, to answer the following question, as appears on the bottom of page 24 of the bill of exceptions:

"What did you say in that letter?" and in overruling defendant's objection thereto, and to which ruling counsel for defendant then and there excepted, as appears of record herein.

Eleventh.

The court erred in permitting the witness, Opal Clark, to answer the following question, as appears on page 28 of the bill of exceptions:

"State whether or not any consideration was paid to you for receiving men, as you have described, at

the house of Della Bennett, after you arrived at Cincinnati?" and in overruling defendant's objection thereto, to which ruling counsel for defendant then and there excepted, as appears of record herein.

Twelfth.

The court erred in permitting the witness, Opal Clark, to answer the following question, as appears on page 29 of the bill of exceptions:

"Now, what, if any, conversation did you have with Miss Bennett after your arrival here with reference to sending of tickets to Chicago?" and in overruling defendant's exception thereto, to which counsel for defendant then and there excepted, as appears of record herein.

Thirteenth.

The court erred in refusing the following question to be asked the witness, Opal Clark, on cross-examination, as appears on page 41 of the bill of exceptions:

"Didn't you tell Louise Wilson that this George was sent to the penitentiary for violating the age-of-consent law of two little girls?" and to which ruling of the court counsel for defendant then and there excepted, as appears of record herein.

Fourteenth.

The court erred in permitting the witness, Opal Clark, to answer the following question, as appears on page 49 of the bill of exceptions:

"Just read the message you have to yourself, and then just state whether you received such a message in Chicago?" and in overruling defendant's objection thereto, to which counsel for defendant then and there excepted, as appears of record herein.

Fifteenth.

The court erred in overruling the motion of the defendant that the telegram, marked "Exhibit No. 7", as appears at the bottom of page 49, and top of page 50 of the bill of exceptions, be stricken from the record, to which ruling of the court counsel for defendant then and there excepted, as appears of record herein.

Sixteenth.

The court erred in permitting the telegram, marked "Exhibit No. 8" to be read in evidence over the objection of the defendant, as appears at the bottom of page 50, and the top of page 51 of the bill of exceptions, to which ruling counsel for defendant then and there excepted.

Seventeenth.

The court erred in permitting the telegram, marked "Exhibit No. 9" to be read in evidence, as appears on page 51 of the bill of exceptions, over the objection of the defendant, and to which counsel for defendant then and there excepted, as appears of record herein.

Eighteenth.

The court erred in overruling the motion of the defendant to have the telegram, marked "Exhibit No. 9" stricken from the record, and to which ruling counsel for defendant then and there excepted, as appears of record herein.

Nineteenth.

The court erred in permitting the witness, Walter J. Wood, to answer the following question;

"Will you state what occurred in your office as between you and the person who signed the name

there as depositor?" over the objection of the defendant, and to which counsel for defendant then and there excepted, as appears on page 68 of the bill of exceptions.

Twentieth.

The court erred in permitting the document, marked "Exhibit No. 10" to be read, as appears on pages 69 and 70 and 71 of the bill of exceptions, and in overruling defendant's objection thereto, and to which counsel for defendant then and there excepted, as appears on page 71 of the bill of exceptions.

Twenty-first.

The court erred in overruling the motion of the defendant to strike from the record "Exhibit No. 10," as appears on page 71 of the bill of exceptions, to which counsel for defendant then and there excepted.

Twenty-second.

The court erred in permitting the document to be read in evidence, as found on pages 73 and 74 of the bill of exceptions, and in overruling defendant's objection thereto, to which counsel for defendant then and there excepted.

Twenty-third.

The court erred in overruling the motion of the defendant to strike said document from the record, as appears on page 74 of the bill of exceptions, to which ruling, counsel for defendant then and there excepted, as appears of record herein.

Twenty-fourth.

The court erred in overruling the motion of the defendant, at the conclusion of the testimony of the plaintiff, to instruct the jury to return a verdict of not guilty against her on the second count of the indictment, and to which ruling counsel for defendant then and there excepted, as is found on page 76 of the bill of exceptions.

Twenty-fifth.

The court erred in overruling the motion of counsel for defendant at the conclusion of the testimony of plaintiff, to instruct the jury to bring in the verdict of not guilty, for the following reasons:

(1) Because the law under which the defendant was tried was unconstitutional;

(2) Because the testimony in the case showed that the tickets were used by one Opal Clark, when the entire transaction, if any, occurred, was between the defendant and Jeanette Clark.

to which ruling, counsel for defendant then and there excepted as appears on page 77 of the bill of exceptions.

Twenty-sixth.

The court erred in refusing the following question to be asked the witness, Louise Wilson, as appears on page 81 of the bill of exceptions:

"Did she ever, at any time, say to you that she (meaning Jeanette Clark) and Grace Parks came here by reason of any tickets that were sent to her by Della Bennett?" and to which ruling, counsel for defendant then and there excepted, and counsel for defendant then and there avowed that if the witness were per-

mitted to testify, she would testify that Jeanette Clark told her that she didn't come to Cincinnati from Chicago on tickets that were sent to her by Della Bennett.

Twenty-seventh.

The court erred in refusing the following question to be asked the witness, Louise Wilson, as appears on page 81 of the bill of exceptions:

"I will ask you to state to the jury whether or not you ever saw Jeanette Clark under the influence of dope?" and to which ruling counsel for defendant then and there excepted, and avowed that if the witness were permitted to answer she would answer in the affirmative.

Twenty-eighth.

The court erred in refusing the following question to be asked the witness, Louise Wilson, as appears on page 82 of the bill of exceptions:

"Please state the number of times you saw Jeanette Clark under the influence of dope." and to which ruling counsel for defendant then and there excepted, and avowed that if the witness were permitted to testify she would answer "Seven or eight times."

Twenty-ninth.

The court erred in refusing the following question to be asked the witness, Louise Wilson, as found on page 86 of the bill of exceptions:

"State whether or not, while Jeanette Clark was an inmate of the Harris home, whether or not she stole a pair of shoes?" to which ruling counsel for defendant then and there excepted, and avowed that if the witness were permitted to answer she would answer in the affirmative.

Thirtieth.

The court erred in refusing the following question to be asked the witness, Joy Handy, as appears on page 94 of the bill of exceptions:

"I want you to state, Miss Handy, as to whether or not this Jeanette Clark had stolen any of your fancy work?" to which ruling counsel for defendant then and there excepted, and avowed that if the witness were permitted to answer she would answer in the affirmative.

Thirty-first.

The court erred in refusing the following question to be put to the witness, Joy Handy, as appears on page 94 of the bill of exceptions:

"I will ask you to state whether or not Jeanette Clark admitted to you that she smoked dope?" to which ruling counsel for defendant then and there excepted, and avowed that if the witness were permitted to testify she would answer in the affirmative.

Thirty-second.

The court erred in refusing the following question to be asked the witness, Joy Handy, as appears on page 94 of the bill of exceptions:

"I will ask you to state whether or not Jeanette Clark told you that she was going to the Alhambra Hotel in Chicago and meet men there and smoke dope with them?" to which ruling of the court counsel for defendant then and there excepted, and avowed that if the witness were permitted to testify she would answer in the affirmative.

Thirty-third.

The court erred in refusing to give to the jury, at the request of the defendant, the following special charge No. 3:

"The defendant in this case is charged in the first count of the indictment that she unlawfully and knowingly caused to be transported and aided and assisted in obtaining transportation for and in transporting in interstate commerce, to wit, from the city of Chicago, Illinois, to the city of Cincinnati, Ohio, for the purpose of prostitution, two women, to wit, Opal Clark and Eva Park. If the jury find from the testimony that the said two women, or either of them, to wit, Opal Clark and Eva Park, were not transported for the purpose of prostitution from Chicago to Cincinnati, then it is your duty to acquit the defendant on the first count of the indictment."

To the refusal of the court in giving the above special charge No. 3, counsel for defendant then and there excepted, as appears on page 99 of the bill of exceptions.

Thirty-fourth.

The court erred in refusing to give special charge No. 4 to the jury, as requested by counsel for defendant, as follows:

"If the jury find from the testimony that either one of the women, to wit, Opal Clark or Eva Park, were not transported for the purpose of prostitution from Chicago, Illinois, to Cincinnati, Ohio, as is charged against the defendant in the first count of the indictment, it is your duty to acquit the defendant on said first count of the indictment."

To the refusal of the court in giving the said special charge No. 4, counsel for defendant then and there

excepted, as appears on page 99 of the bill of exceptions.

Thirty-fifth.

The court erred in refusing to give special charge No. 6 to the jury, as requested by counsel for defendant, as follows:

"The defendant is charged in the third count of the indictment with unlawfully and knowingly persuading, inducing, enticing, and caused to be persuaded, induced, and enticed, two certain women, to wit, Opal Clark and Eva Park, to go from Chicago, Ill., to the city of Cincinnati, Ohio, in interstate commerce for the purpose of prostitution, and with the purpose and intention on the part of the defendant that each of said women, to wit, Opal Clark and Eva Park, should engage in the acts of prostitution in the city of Cincinnati. If the jury find from the testimony that the defendant did not persuade, induce, and entice, or cause to be persuaded, induced, and enticed, the two women mentioned, to wit, Opal Clark and Eva Park, to come from Chicago, Ill., to the city of Cincinnati, Ohio, for said unlawful purpose, it is your duty to acquit the defendant."

To the refusal of the court to give said special charge No. 6 to the jury, as requested, counsel for defendant then and there excepted, as appears of record.

Thirty-sixth.

The court erred in refusing to give special charge No. 7, as requested by counsel for defendant, as follows:

"If the jury find from the testimony that only one woman was transported, or that the defendant was guilty of the acts charged in all three counts of the in-

dictment against one woman who is mentioned in the indictment and not against both, it is your duty to acquit the defendant under all counts of the indictment."

To the refusal of the court to give said special charge No. 7, as requested, counsel for defendant then and there excepted, as appears of record.

Thirty-seventh.

Misconduct on the part of the district attorney in using the following language to the jury in his argument, to which language counsel for defendant then and there excepted, as appears on page 102 of the bill of exceptions:

"And any man, or woman, although she has lived in a house of prostitution, can sometimes tell the truth; and when she does tell the truth, and when her testimony is corroborated by facts that are undisputed, then her testimony must be believed; but, gentlemen of the jury, you must remember in this case that the witness for the Government is no better or worse than most of the witnesses for the defendant, or the defendant. There is no difference."

Thirty-eighth.

The court erred in charging the jury in its general charge, as follows:

"There is evidence tending to corroborate her testimony, and it is for you to consider its force and value and the weight to give to it."

To which charge counsel for defendant excepted in the presence of the jury, as appears of record herein.

Thirty-ninth.

The court erred in charging the jury in its general charge, as follows:

"It is within the province of the jury to convict upon uncorroborated testimony of an accomplice, but it is the duty of the court to charge the jury if the testimony of an accomplice is not corroborated, it is never safe to find the defendant guilty. But if the testimony is corroborated, then it is for the jury to say what weight should be given to it, how far it is corroborated, and how strong the corroboration is, in determining the question of the guilt of the defendant."

To which charge counsel for defendant excepted in the presence of the jury, as appears of record herein.

Fortieth.

The court erred in its general charge to the jury, as follows:

"All three counts of the indictment charge offenses against the defendant with respect to two women, Opal Clark and Eva Park. There is no evidence tending to show that the defendant had anything to do with Eva Park with respect to inducing her of her own act—the defendant of her own act—inducing the woman Eva Park, or enticing, or persuading her to come to the city of Cincinnati, Ohio. I charge you, gentlemen, in that respect that the gravamen of the offenses charged against the defendant is, first, in causing to be transported women for the purposes alleged; secondly, of furnishing transportation—furnishing tickets in the language of the indictment—procuring or obtaining any ticket or tickets, or any form of transportation; and thirdly, inducing, per-

suading, or enticing them to come. If you shall be of the opinion with respect to carrying these two women from Chicago to Cincinnati—I may say in that connection, that if it should appear from the testimony that only one of these women is concerned with any of the offenses charged against this defendant, that that would be sufficient to maintain the claim of the Government; that is to say, it is not necessary it should be proved beyond a reasonable doubt that the defendant was guilty of each one of these offenses charged in the indictment with respect to the two. If you judge from the testimony that one of the women was the subject of what the defendant did with respect to what is charged in all of the offenses charged in the indictment, or with respect to only one, or only two of them, * * *

To which portion of the charge, counsel for defendant excepted in the presence of the jury.

Forty-first.

The court erred in its general charge to the jury, as follows:

"There is evidence tending to show that the witness, Opal Clark, by her own evidence, went sometime by another name, and that neither of the names, either that of Opal Clark, or the other name, Jeanette Clark, was her right name, but it was something else, Jeanette Laplant or Laplace; but I charge you in that respect, gentlemen, that if you are satisfied from the evidence that Opal Clark charged in the indictment was one of the women concerned, and Jeanette Clark, or Jeanette Laplant, or Laplace, are one and the same person, that the indictment is sufficiently explicit upon that point."

Counsel for defendant excepted to that portion of the court's charge, herein mentioned, in the presence of the jury.

Forty-second.

The court erred in overruling the motion in arrest of judgment, to which the defendant excepted, as appears of record herein.

Forty-third.

The verdict and judgment rendered herein is contrary to law.

Forty-fourth.

The verdict and judgment rendered herein is contrary to the law and not sustained by the evidence.

Forty-fifth.

The verdict does not establish the guilt of the defendant beyond a reasonable doubt.

Forty-sixth.

For other reasons apparent upon the face of the record.

Wherefore, defendant prays that said judgment of the District Court may be reversed.

Attorney for defendant.

[Opinion of the Circuit Court of Appeals.]

United States Circuit Court of Appeals, Sixth Circuit.

DELLA BENNETT, PLAINTIFF	}	Error to the District Court of the United States for the Southern District of Ohio.
in error,		
vs.		
UNITED STATES OF AMERICA,		
defendant in error.		

Submitted February 14, 1912.

Decided March —, 1912.

Before WARRINGTON, KNAPPEN, and DENISON,
Circuit Judges.

Respondent was, upon her plea of not guilty, convicted of violating the act of June 25, 1910, commonly known as the "white-slave act." The testimony indicated that she was the keeper of a house of prostitution in Cincinnati; that in the summer of 1910, a former inmate of her house, then known to her by the name of Jeanette Clark, was in a similar house in Chicago; that respondent sent to Jeanette Clark several letters and telegrams asking her to return and bring other girls with her; that finally respondent sent railroad tickets for this purpose, and Jeanette Clark and Eva Parks used the tickets to come from Chicago to Cincinnati, and entered and remained in the Bennett house. The errors assigned are upon the constitutionality of the law and upon some questions of evidence.

DENISON, Circuit Judge (after stating the facts as above):

It is clear that the power of Congress to pass this statute must be found in its power to regulate com-

merce. The arguments of counsel for plaintiff in error, as we understand them, are that commodities only, and not persons, can be the subject of commerce; that persons can not be prohibited from traveling from one State to another because of some intention they may have; that the woman herself is not by this act forbidden to travel, and it can not be a criminal act to aid an unforbidden act; and that the law is an invasion of the police powers of the States.

It can not now be doubted that transportation, of persons as well as of property, is commerce, and that Congress may regulate the interstate transportation of persons (*Gloucester Ferry Co. vs. Pennsylvania*, 114 U. S., 196, 203; *Covington Bridge Co. vs. Kentucky*, 154 U. S., 204, 217; see also the cases involving passenger traffic under the interstate commerce acts).

It is also settled that the constitutional power to regulate includes the power to prohibit, in cases where such prohibition is in aid of the lawful protection of the public. (*The Lottery Case*, 188 U. S., 321, 354.)

We think it a mistake to assume that this statute does not prohibit, and so impliedly permits, the primary act and yet punishes as a crime a merely incidental wrong. The act does not undertake to prohibit the woman from traveling from one State to another of her own volition, and in the supposed exercise of her inherent personal rights, no matter what her purpose as to her future conduct may be. This conclusion is emphasized by observing that the woman traveling may be perfectly innocent of any intended immorality, and that the act can not be intended to interfere with liberty of travel by such person. The primary thing forbidden is the inducing of a person to come into the State, with unlawful purpose by the inducer and in aid of such unlawful

purpose, but without direct regard to the innate character or purpose of the person induced. It is this primary thing and the incidental transportation by the carrier which are forbidden and penalized.

We do not find in the statute either the purpose or the effect to interfere with the police powers of the State. The law is directed only against the inducing or performing of interstate transportation; and this entire subject matter is obviously not within the scope of the police power of any State; hence, its exercise can not be an invasion of such power. It may well be assumed that the laws of all States prohibit, as those of Ohio do, the various ultimate acts of immorality referred to in this statute, and it follows that the law in question is in aid of the complete and effective exercise by the States of their respective police powers; and is of the same class as many acts of Congress in recent years having the same general purpose (see enumeration of such acts in *U. S. vs. Hoke*, 187 Fed. Rep., 992, 1000, 1003).

We conclude that the act is not open to the constitutional objections presented.

Respondent urges that while she was indicted for causing the interstate transportation of Opal Clark, and it was not alleged that Opal Clark had, in fact or by repute, any other name, the evidence showed the transportation of a woman who was known to respondent as Jeanette Clark, and whose real name was wholly different. This is said to be a variance between allegation and proof; and we are cited to cases in textbooks and reports to the effect that the indictment should contain the true name of the individual affected by the criminal act. It is not necessary to review these cases. Some of them were decided under

stricter rules of pleading than this court has applied. The essential things involved are that the record should be in such shape as to protect the respondent against a second prosecution for what is really the same offense, and as fairly to inform respondent of the crime intended to be alleged. These considerations involve the question of the identity of the person named—either actual identity or identity as supposed by respondent. Whatever obstacles, if any, there might be in afterwards interpreting and applying the record of indictment and judgment by parol testimony, as must be and is done with reference to civil judgments, we find in this case that the bill of exceptions is now a part of the record as much as is the indictment or the judgment, and that by the whole record there clearly appears the entire identity of the person named in the indictment with the person whom respondent must have known to be the one intended to be named and with the person who was actually transported. This leaves no possible ground for prejudice resulting from the double variance between the name used in the indictment and the name known to respondent and the real name.

Respondent further urges that while the indictment charges the transporting of two persons for the purpose stated, the proof wholly failed as to one of them. This also amounts to a claim of variance between allegation and proof. If we accept the claim that the proof did so fail, still we should not think the variance fatal. The violation of the statute is complete if one person is transported, and the fact that two persons are named in the same count instead of basing a separate count upon the travel of each person should not be fatal to a conviction. It is true

that where two persons are named as the subject of the offense, and it is proved as to one of them only, there is a seeming variance, but it is really a failure of proof as to a thing which it was not necessary to allege. The only points here, which are of substance and not of form, are, as with reference to the last matter discussed, the question of misleading the respondent and the question of protection against a future prosecution. It is clear that respondent would not be misled unless there were two occasions so as to give rise to some ambiguity, and no such thing here appears. It is true also that as to the person concerning whom the proof failed, the record would show a conviction which was insofar really unauthorized, but the protection against a future prosecution would be just as perfect, and it can not be presumed that the action of the trial court, in possession of all the facts, would be prejudicially affected in the matter of sentence. In these respects, the case is within the rule that a general conviction and sentence upon several counts will not be disturbed because all but one of the counts are bad, provided the good counts support the sentence (*Claassen vs. U. S.*, 142 U. S. 140, 146; *Hardesty vs. U. S.*, C. C. A. 6, 168 Fed. Rep. 25, 26).

The judgment will be affirmed.

